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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 278.

THE STEAMBOAT "CHARLES MORGAN," HER ENGINES, &c.; MARY E. STEIN, WIFE OF ALBERT STEIN, SOLE OWNER; ALBERT STEIN, MASTER; AND THOMAS P. LEATHERS, BURRIS D. WOOD, ALPHONSE MARTIN, AND WILLIAM FAGAN, SURETIES, APPELLANTS,

vs.

MARTIN H. KOUNS AND WILLIAM T. SCOVELL, AND THE HIBERNIA INSURANCE COMPANY OF NEW ORLEANS, SUBROGEE OF MARTIN H. KOUNS AND WILLIAM T. SCOVELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED SEPTEMBER 26, 1882.

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1 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit, and Eastern District of Louisiana.

MARTIN H. KOUNS *& al.*
versus
STEAMBOAT CHARLES MORGAN, Captain, &c., &c. } No. 9664.

Transcript from the District Court of the United States. Filed November 7th, 1881.

Libel. Filed December 7th, 1878.

To the Hon. E. C. Billings, judge of the district court of the United States for the District of Louisiana, in admiralty sitting:

The libel and complaint of Martin H. Kouns and William T. Scovell, both residents of the city of New Orleans, in said district, sole and only owners of the steamboat Cotton Valley, hereinafter mentioned, against the steamboat Charles Morgan, (whereof
2 A. Stein is, or lately was, master,) now lying in the port of New Orleans, in the district of Louisiana aforesaid, and within the admiralty and maritime jurisdiction of this hon. court, her engines, machinery, boats, tackel, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime. And thereupon the said Martin H. Kouns and William T. Scovell do allege and articulately propound as follows:

First. That the steamboat Cotton Valley is a vessel of more than twenty tons burthen, to wit, of the burthen of four hundred tons or thereabouts, and at the time when the cause of action hereinafter mentioned and set forth arose was enrolled and licensed for the coasting trade, and was employed in the business of navigation and commerce between the ports of New Orleans and Shreveport, on Red river and all intermediate ports and places, all of which ports and places are connected with the sea by waters
3 navigable by vessels of twenty tons burthen and upwards and within the admiralty and maritime jurisdiction of this hon. court.

Second. That on the 30th day of November, in the year 1878, about twenty minutes past six o'clock p. m., the aforesaid steamboat Cotton Valley, being tight, staunch, and well manned and officered, equipped and provided, and in every particular seaworthy, left the port of New Orleans aforesaid, on a voyage to the aforesaid port of Shreveport, with about one-half of a full cargo of general assorted cargo.

Third. That during said voyage, to wit, about four o'clock a. m., same day, of the first day of December, 1878, the said steamboat Cotton Valley, being then a short distance below Bruigier Point, on the Mississippi river, about three miles below the town of Donaldsonville, ascending the left bank, geographically, of said river, about

one hundred yards from the said left bank, those on watch
4 discovered a steamboat descending the river, about one mile above the said steamboat Cotton Valley, and near the middle of the river, when said steamboat (which afterwards was discovered to be the Charles Morgan) had approached to within about eight hundred yards of the steamboat Cotton Valley, gave a signal of one blast of her whistle (indicating thereby that she intended to keep upon the left bank of the river, which she had been running for some distance), which signal had been promptly answered by the steamboat Charles Morgan when said signal was given by the Cotton Valley; she was still about one hundred yards from the left bank, and the Charles Morgan continued to approach nearer and nearer to the Cotton Valley until she was about two hundred and fifty yards from the Cotton Valley, and then the Charles Morgan gave three blasts of her whistle, and instantly the pilot of the Cotton Valley rang his bell to stop her, which order was immediately obeyed, but the Charles Morgan continued her course with
5 great speed, and in less than thirty seconds came with sufficient force and violence against the steamboat Cotton Valley, striking her on her larboard or port side at an angle of about forty-five degrees with her bow, about six feet forward of the cylinder timbers of the Cotton Valley down to or near her kelson, thereby laying her whole depth open to the admission of the water, which rushed into her hold with great rapidity, in consequence whereof she filled and sunk out of sight in about ten or fifteen minutes after the collision.

Fourth. At the moment of the collision the headway of the Cotton Valley was nearly or quite stopped, and the Charles Morgan at the same time had very considerable headway, and struck the Cotton Valley with great force and violence, thereby almost instantly causing her total and absolute destruction.

That the Cotton Valley immediately after the collision went down, with her cargo and all her officers, men, and passengers, and everything she had on board of her; in consequence whereof about
6 ten or twelve of the persons thus carried down with the Cotton Valley lost their lives in the river by drowning or otherwise, and a large portion of her cargo was totally lost in the river.

That the wind was blowing pretty fresh at and for some time previous to the collision, quartering across the river from the left to the right bank thereof; in consequence whereof the pilot of the Cotton Valley crossed the river, at or near Hampton's Point, from the right to the left bank of the river, at about one mile below the usual crossing for ascending boats; and the Cotton Valley, after crossing to the left bank of the river and coming within about one hundred yards of the left bank, at about one mile below the usual crossing, continued up the left bank at about the distance of one hundred yards from the left bank, running parallel with that shore or bank until the collision aforesaid occurred.

7 Fifth. That the river at the then stage of water was fully three-quarters of a mile wide at the place of the collision, and had the Charles Morgan continued anywhere between the middle

thereof and the right bank, as her signal indicated, and which is the usual and customary course for steamboats descending the Mississippi river, at the place where the collision occurred, the collision would have been avoided.

That the Cotton Valley was running parallel and near to the left bank of the river when she gave her signal, which was the proper and usual place for ascending boats at that place, and continued that course until the collision occurred, and had the Charles Morgan obeyed the signal given and received by the two boats and kept down the river between the middle and right bank, the two boats would have passed each other at a very considerable distance apart.

Sixth. That the collision aforesaid was wholly attributed
8 to the carelessness, negligence, want of skill, or wilfulness of those in charge of the Charles Morgan, and they are alone to blame for the collision, and those in charge of the Cotton Valley were in no manner whatever to blame for said collision.

That those in charge of the Cotton Valley did all they possibly could to avoid the collision, but those in charge of the Charles Morgan did all and every thing necessary to bring about the collision.

That the night was sufficiently light and clear to navigate the river in perfect safety, and the Cotton Valley was navigated with due and proper care. That she had exhibited at and before the collision the signal lights required of boats of her class in said trade, and she had also proper and efficient men, officers, and watch on duty, each within proper places and position at and long previous to the collision.

Seventh. That at the time when a danger of the collision between the said vessels was first perceived by those on the Cotton
9 Valley, it was impossible for her to get out of the way of the Charles Morgan, nor were there any means to which she could, with propriety, have resorted for that purpose. All that could have been done by those on the Cotton Valley to avoid the collision was done, as already stated. That those on the Cotton Valley had not the least reason to fear a collision until the Charles Morgan was within a few feet of the Cotton Valley, and approaching with considerable speed.

Those on the Cotton Valley believed that three blasts given by the whistle of the Charles Morgan indicated that she was a coast packet, about to make a landing, or that she was a Red river boat belonging to the same line of boats to which the Cotton Valley belonged, and intended the three blasts of her whistle as a hail given to the Cotton Valley, and hence the reason why the Cotton Valley rang her stopping bells in answer to said hail, as hereinbefore stated.

And the pilot of the Charles Morgan put his helm hard a
10 starboard, and thus bore away to his right, as he had indicated he would do by his signal of one blast of his whistle, the two boats would have passed far away from each other, and out of all danger of a collision.

The collision herein complained of was the result of gross and wilful negligence of pure malignity on the part of those in charge of the Charles Morgan, or the utter inability on their part to make

the Charles Morgan answer her wheels, which may have been the real cause of the collision, since A. Stein, her master, stated, immediately after the collision, that his said boat, the Charles Morgan, was unmanagable.

Eighth. That at the time of said collision, and total loss of the said steamboat Cotton Valley, and her cargo, the libellants were the true and lawful owners of the said steamboat, and the value thereof was fully eighteen thousand dollars, and your libellant, Mar-
11 tin H. Kouns, was the sole owner of a lot of personal effects wholly lost by said collision, consisting of wearing apparel of himself and wife and children, furniture, and other personal effects of the value of fourteen hundred and ninety-four dollars, or thereabouts, as detailed in Exhibit (Z^2) hereto annexed, as part of this libel, and that by reason of the careless, negligent, unskilful, and improper management of the said steamboat Charles Morgan, and of the collision thereby occasioned of the said Charles Morgan with the said Cotton Valley, the libellants hath sustained damages to the amount of nineteen thousand four hundred and ninety-four dollars or thereabouts, for which they claim reparation in this suit, in both principal and interest thereon from judicial demand.

Ninth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libellants pray that process in due form
12 of law may issue against the Charles Morgan, her engines, machinery, boats, tackle, apparel, and furniture, and that this hon. court will pronounce for the damages aforesaid, and decree the same to be paid with costs and, for such other and further relief and redress as to right and justice may appertain and the court is competent to give in the premises.

(Signed) M. H. KOUNS.

(Signed) SINGLETON & BROWNE,
Proctors for Libellants.

Sworn to and subscribed before me, this 7th December, 1878.

(Signed) J. DEVONSHIRE,
U. S. Comm'r.

EXHIBIT Z^2 ANNEXED.

Steamboat Charles Morgan, Dr., to Martha H. Kouns.

1878, Dec'r 1. For value of clothes, jewelry, furniture, &c., lost by collision—

Mrs. Kouns:

1 silk dress and trimmings, $40; 1 grenadine do., $40	$80 00
2 common dress[es], ca. $15, $36; 1 gold watch and chain, $160	196 00
1 set jewelry, $37.50; 1 cloak, $25	62 50
Collars, cuffs, h'd'ch'fs, stockings, &c.	25 00
Underwearing apparel	45 00
13 Shoes and slippers, $10; gloves, $5; 1 bonnet, $9; 1 hat, $2.50	26 50
1 trunk, $18; 1 box jellies, (27 jars), $50	68 00

Child, Laura:	
1 cloak, $10; 1 dress, $8; 1 dress, $5; 1 hat, $4.50	$27 50
1 water-proof, $10; common dresses, $15; underwear, &c., $20	45 00
1 trunk, sole leather	30 00
Child, Warren:	
2 suits, ea. $6, $12; 4 suits, $2.50 ea., $10; 1 overcoat, $10	32 00
2 hats, $2.50; underclothes, shoes, socks, h'd'ch'fs	21 50
1 trunk	18 00
Self:	
1 watch and chain, $150; 1 suit, $60; 1 suit, $30	240 00
1 suit summer clothes, $19; 1 suit, $23	42 00
1 suit continental uniform, $109; 2 pr. boots, $10 and $16, $26	135 00
1 pr. shoes, $7; 2 overcoats, ($20 & $10), $30; 16 shirts, $40	77 00
Collars, neckties, h'dk'ch'fs, socks	25 00
Drawers and under-shirts, $24	24 00
3 hats, (6, 2, 2), $10; 1 sole leather trunk, $30	40 00
Furniture:	
1 bed-room set, $60; 1 feather bed, mattrasses, &c., $84	144 00
1 centre table, $20; 1 extension table, $15	35 00
1 table	15 00
1 easy chair, $10; 1 fancy chair, $5	15 00
1 rocker	5 00
1 set dining chairs, $12; 1 lounge, $8	20 00
	$1,494 00

Order on Libel.

Let admiralty warrant issue as prayed for.
December 7th, 1878.
(Signed) R. DEVONSHIRE, *D'y Clerk.*

14 *Admiralty Warrant, issued December 7th, 1878.*

The President of the United States of America to the marshal of the district of Louisiana, or to his lawful deputy, Greeting:

You are hereby commanded forthwith to seize, and into your possession take, the steamboat Charles Morgan, her tackle, apparel, &c., now libelled by Martin H. Kouns *et al.* for the cause set forth in the libel now pending in [the] district court of the United States for the district of Louisiana; that you do cite and admonish the owner, owners, and all persons having or pertaining to have any right, title, or interest in or to the same, to be and appear before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the

service hereof, to show cause, if any they have or can, why the said steamboat should not be condemned and sold agreeably to the prayer of libellant, and how you have executed this warrant that
15 you make return according to law.

Witness the Honorable Edward C. Billings, judge of the said court, at New Orleans, this 7th day of December, 1878, and the 103d year of the Independence of the United States.

[SEAL.] (Signed) R. DEVONSHIRE, *D'y Clerk.*

Marshal's Return on Warrant.

Received Dec'r 7, 1878, by the U. S. Marshal, and on the same day seized the st'b't Charles Morgan, her tackle, apparel, &c., by serving the same on McCary, mate on said boat.

(Signed) J. WHARTON, *D'y Marshal.*

Claim. Filed Dec'r 7th, 1878.

MARTIN H. KOUNS
vs.
STEAMBOAT CHARLES MORGAN *et al.* } No. 11289.

To the Honorable Edward C. Billings, judge of the district court of the United States for the District of Louisiana:

16 Albert Stein, master of the steamboat Charles Morgan, intervening herein for the interest of his wife, Mary E. Stein, of Cincinnati, in the State of Ohio, sole owner of the steamboat Charles Morgan, her boat's engines, tackle, apparel, and furniture, appears before this honorable court and claims said steamboat, her boats, engines, tackle, apparel, and furniture, and says that the said Mary E. Stein, his wife, is the true and *bona fide* owner thereof, and and that no other person is the owner of the same.

And thereupon, he prays that this honorable court will be pleased to decree a restitution of the same to him, and otherwise right and justice to administer in the premises.

(Signed) ALBERT STEIN.

Subscribed and sworn to, this 7th day of December, A. D. 1878.

(Signed) R. DEVONSHIRE, *D'y Clerk.*

(Signed) CHAS. S. RICE, *Proctor.*

17 *Motion and Order to Bond and Appointment of Appraisers. Filed December 7th*, 1878.

U. S. District Court, District of Louisiana. In Admiralty.

MARTIN H. KOUNS *et al.*
vs.
STEAMBOAT CHARLES MORGAN, &c. } No. 11289.

On motion of Charles S. Rice, proctor for Mrs. Mary E. Stein, claimant, and on suggesting that she has filed her claim herein for

the possession of said steamboat, her boats, engine, tackle, apparel, and furniture, as owner thereof, the same being now in the custody of the marshal, under admiralty process issued in above-entitled cause, and on suggesting that she is desirous of having the said steamboat, her boats, engines, tackle, apparel, and furniture, delivered to her, upon giving bond for the value of the same, to be ascertained upon due appraisement:

It is ordered by the court that Henry J. Brinker and Joseph
18 A. Aiken be named as appraisers to appraise the said steamboat, her boats, tackle, apparel, and furniture, and in case of their failure to agree, that William Creevy be named as umpire to determine said value, whose decision shall be final, and that this mover have delivery of said property on executing bond for said value, with good and sufficient surety, and the appraisers selected by the libellants; and claimants having agreed upon the sum of seventeen thousand five hundred dollars as the value of the steamboat above mentioned, her tackle, &c., it is ordered that the bond be given in that amount.

(Signed) EDWARD C. BILLINGS, *Judge.*

Oath of Appraisers. Filed December 7th, 1878.

U. S. District Court. In Admiralty.

M. H. KOUNS *et al.*
vs.
ST'B'T CHS. MORGAN. } 11289.

We, Joseph A. Aiken and H'y J. Brinker, appraisers appointed by the court to appraise the steamer Charles Morgan, her tackel,
19 apparel, &c., libelled in the above-entitled cause, do solemnly swear to perform our duties as such appraisers to the best of our abilities, so held me God.

(Signed) JOS. A. AIKEN.
Do. H'Y J. BRINKER.

Sworn to and subscribed before me, this 7th December, 1878.
(Signed) R. DEVONSHIRE, *D'y Clk.*

Report of Appraisers. Filed December 7th, 1878.

U. S. District Court.

M. H. KOUNS *et al.*
vs.
ST'B'T CHAS. MORGAN. } 11289.

The undersigned, appointed appraisers to appraise the steamboat Charles Morgan, beg leave to report that they are familiarly acquainted with the said steamboat, and they are of opinion that her present value amounts to seventeen thousand five hundred dollars.

(Signed) JOS. A. AIKEN.
" H. J. BRINKER.

20 *Bond. Filed December 7th*, 1878.

UNITED STATES OF AMERICA, *District of Louisiana:*

Know all men by these presents that we, Albert Stein, master of the steamboat Charles Morgan, and lawful bailee for Mary E. Stein, wife of said Albert Stein, of Cincinnati, Ohio, claimant and sole owner of the steamboat Charles Morgan, as principal, and A. Martin, T. P. Leathers, B. D. Wood, and Wm. Fagan, as sureties, are held and firmly bound unto Martin H. Kouns and William T. Scovell, libellants, in the following sums, each for the sum of four thousand three hundred and seventy-five dollars, lawful money of the United States of America, for the payment whereof to the said libellants, their heirs, executors, administrators, or assigns, we jointly and severally bond ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our respective names and seals, hereunder affixed by us, at New Orleans, this 7th day of December, 1878.

21 Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suit of Martin H. Kouns *et al. vs.* Steamboat Charles Morgan, her tackle, apparel, and furniture, and No. 11289 on the docket of the said court, commanding the marshal to seize and take into his possession the said steamboat, which has been seized accordingly, but has been released from said seizure and restored to Albert Stein, the master and lawful bailee thereof, by reason of the signing, sealing, and delivery of these presents, said claimant having obtained leave of court to bond said property and filed a claim thereto, which is now of record in the clerk's office of this court:

Now the condition of the above obligation is such that if said claimants and sureties abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the pro-
22 cess is returnable, or in any appellate court, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

(Signed)	ALBERT STEIN.	[L. S.]
"	A. MARTIN.	[L. S.]
"	T. P. LEATHERS.	[L. S.]
"	B. D. WOOD.	[L. S.]
"	WM. FAGAN.	[L. S.]

Signed, sealed, and delivered in presence of—
(Signed) R. DEVONSHIRE,
D'y Clerk.

A. Martin, T. P. Leathers, B. D. Wood, and Wm. Fagan, sureties on the within bond, being duly sworn, say: That they reside in this

city, and are worth the sum of $4,375 each over and above all his just debts and liabilities.

(Signed) A. MARTIN.
" T. P. LEATHERS.
" B. D. WOOD.
" WM. FAGAN.

Sworn to and subscribed before me, this seventh day of December, A. D. 1878.

(Signed) R. DEVONSHIRE, *D'y Clerk.*

23 *Writ of Release. Issued December 7th,* 1878.

United States District Court, District of Louisiana.

CLERK'S OFFICE, NEW ORLEANS, *Dec.* —, 1878.

MARTIN H KOUNS *et al.* *vs.* ST'B'T CHS. MORGAN. } No. 11289.

The President of the United States of —— to the marshal of the district of Louisiana or his lawful deputy, Greeting:

Whereas Albert Stein, master of said steamboat, hath this day filed a claim thereto on behalf of Mary E. Stein, sole owner thereof, and which said claim is now of record in this office:

You are hereby authorized to release the said steamboat from seizure, and her to restore to the possession and custody of said claimant, she having given bond, conditioned as required by law, and otherwise complied with the rules of the court, &c., and make return hereon of your doings in the premises.

24 Witness the Hon. E. C. Billings, judge of said court, at New Orleans, this — day of December, A. D. 1878, and the 103 year of the Independence of the United States.

[SEAL.] (Signed) R. DEVONSHIRE, *D'y Clerk.*

Answer. Filed January 7th, 1879.

MARTIN H KOUNS *et al.* *vs.* THE STEAMBOAT CHARLES MORGAN. } No. 11289. In Admiralty.

The answer of Mary E. Stein, wife of Albert Stein, claimant, and owner of the steamboat Charles Morgan, to the libel of Martin H. Kouns and William T. Scovell against the said steamboat.

And now comes Mary E. Stein, wife of Albert Stein, of Cincinnati, in the State of Ohio, and for answer to the libel of Martin H. Kouns and William T. Scovill against the said steamboat, her boats, engines, tackle, apparel, and furniture, do allege and propound as follows, to wit:

25 First. That respondent has no knowledge as to the matters and things stated in the first article of said libel, and therefore requires that the same shall be proved.

Second. That respondent has no knowledge as to the voyage or intention of the same stated in the second article of said libel, but denies that at the time therein stated the steamboat "Cotton Valley" was well manned, officered, and equipped, and — every particular seaworthy.

Third. That as to the matters stated in the third article of said libel the same are in a great part untruly alleged and pleaded, for the truth was and is that at the time therein stated the said steamboat "Cotton Valley" was not ascending the Mississippi river about one hundred yards from its left bank (geographically), when near or a short distance below Bringier's Point in said river, at the time or for some time before she blew a signal of one blast of her whistle,
26 to indicate that she intended to keep upon the left bank of the river, nor is it true that she continued her course at or at about said distance from said bank, but before and at the time the said steamboat Cotton Valley gave the signal of one blast of her whistle she was near the right bank (geographically) of said river, and out of her proper course or place in said river, her proper place being along the left bank of said river, in order to run the point on said river thereto adjacent, called Bringier's Point, on the left bank of said river, that after having replied to the one blast of the whistle of the steamboat "Cotton Valley," the master and both the pilots of the steamboat "Charles Morgan" who were at the time on duty, in the pilot-house of said steamboat, having seen immediately that the steamboat "Cotton Valley" was not in her proper course or place in said river, the first pilot caused four short blasts of the whistle of the steamboat "Charles Morgan" to be blown, which is the prescribed signal on said river for the descending
27 steamboat, and in the then premises the signal to said steamboat Cotton Valley to stop and reverse her engines; that before blowing said signal the engines of the steamboat Charles Morgan were stopped and reversed, and her headway was entirely or almost entirely stopped; that the said steamboat Cotton Valley never replied to said signal, as it was her duty to do, and, so far as respondent is able to learn, did not stop her engines, nor did she at any time reverse her engines, though warned by said signal so to do, and though bound so to do by the lawful rules and regulations for the navigation of said river; that shortly previous to the time mentioned in said article the steamboat Charles Morgan, having made a landing at Donaldsonville, on the right bank of said river, backed around out of said landing and straightened down the river, taking and keeping at all times thereafter her proper position in or near the middle thereof, shaping her course according to the
28 shape of the bend in said river adjacent the point called Bringier's Point, as it was — only her right but her bounden duty to do, as a descending boat at a low stage of water and in the night time; that at the time when the Cotton Valley blew the signal of one blast of her whistle, indicating that she would take the left bank of said river, she, the Cotton Valley, was then so near the right bank of said river as to be considerably on the starboard of the course in which the Charles Morgan was being navigated in

or near the middle of said river; that in consequence of said steamboat Cotton Valley being in such improper position, the signal, as hereinbefore stated, was blown by the Charles Morgan for the Cotton Valley to stop and reverse her engines, the engines of the *engines of the* Charles Morgan were or had been already stopped and reversed; that though the course of the Charles Morgan was almost or entirely stopped, the Cotton Valley continued to approach towards
29 her with considerable speed, and when within a very short distance changed her course across the bow of the steamboat Charles Morgan, and came violently against the stern of the Charles Morgan, striking the stern of the Charles Morgan with her port side a short distance forward of her cylinder timbers, inflicting upon herself such injuries as to cause her to fill with water and soon sink out of sight; that at no time was the speed of the steamboat Cotton Valley checked, and her wheel was in motion, moving her forward at the very moment of the collision.

Fourth. That as to the matters stated in the fourth article of said libel, the same are, in great part, untruly alleged and pleaded, for the truth was and is as stated in the third article of this answer. There was a strong wind blowing at, before, and after the time of said collision, as stated in said article.

30 Fifth. That as to the matters stated in the fifth article of said libel, the same are wholly untrue, as alleged and pleaded, for the truth was and is that the steamboat Charles Morgan was, before and at the time of said collision, in her proper place in the Mississippi river, was observant of and did respond to and obey all signals given by the Cotton Valley, and herself did give the signals, and took all necessary precautions by way of stopping and reversing her engines; all of which the steamboat Cotton Valley failed to do, or in anywise observe.

Sixth. As stated in the sixth article of said libel, the night was sufficiently light and clear to navigate the river in perfect safety; that, as to the other matters stated in said article, the same are wholly untruly alleged and pleaded, for the truth was and is that the said collision was wholly attributable to the gross careless-
31 ness, negligence, and want of skill of those having charge of the Cotton Valley, and they are alone to blame for said collision, and those in charge of the Charles Morgan were in no manner to blame for said collision, but did everything that could be done to avoid said collision; that said steamboat Cotton Valley did not, at or before the said collision, exhibit the signal lights required by law, showing only a red light on her port side; nor had she proper, efficient, and sober officers and watch on duty in their proper place at or long before the said collision, for the truth was and is that said steamboat Cotton Valley had not, before or at the time of said collision, proper, lawful, or suitable officers on duty in her pilot-house or on watch, and the want of such suitable and proper officers and watch on duty contributed greatly, if the same did not entirely effect, to cause said collision.

Seventh. That as to the matters stated in the seventh article of said libel the same are mostly untruly alleged and pleaded,

32 for it was and is true that if the Cotton Valley had been in her proper place in said river, or if she had obeyed the signals given by the Charles Morgan as she was bound to do, she would have avoided said collision; that it was through fault and negligence of those on board the Cotton Valley and the want of proper and suitable watch that -he did not understand, reply to, and act upon the signals of danger, which were given to her in ample time; to have insured safety by the steamboat Charles Morgan and it was the fault of libellants to have adopted a signal, or series of signals, in the line of boats to which they belonged that could not be distinguished from or were likely to be taken for the signal prescribed by law and the rules and regulations for the navigation of the river.

Respondent says that having answered the signal of the Cotton Valley it was the duty of the Charles Morgan to continue her
33 course, as she was the descending steamer, and the duty of the Cotton Valley to manœuvre; that even had it been the duty of the Charles Morgan to port (not starboard) her helm, so as to go to the right, she could not have done so, owing to the position of the Cotton Valley on her starboard bow; that, seeing the danger, the Charles Morgan gave the signal of several short whistles, as it was her lawful and bounded duty to do, and stopped and reversed her engines at once, and had the Cotton Valley answered and obeyed said signal and stopped and reversed her engines, as it was her legal bounden duty to do, she would have avoided said collision.

Respondent also avers that the said steamboat Charles Morgan was thoroughly manageable; that she answered her wheels at all times, and that the said collision was not caused through any fault, negligence, or want of skill of any of her officers or crew; that she was fully officered, manned, and equipped, and was staunch,
34 strong, and in every respect seaworthy; that she had a full complement of licensed officers, and all sober; that at and before the time of said collision she had a lawful and efficient watch, in proper and suitable position; that every precaution was taken by her to avoid the danger of collision; all warnings of its approach given to, though not heeded by, the Cotton Valley, and every means in her power made use of to prevent it.

Eighth. That as to the matters stated in the eighth article of said libel, respondent has no knowledge as to the owner's bill, or value of the property described and claimed by libellants to belong to them; but believes the same to be greatly exaggerated, and the values therein and in document Z^2 largely overestimated; that as to the other matters in said article stated, the same are wholly untruly alleged and pleaded.

Ninth. That all and singular the premises in said bill are
35 not true, and that all and singular the premises herein are true.

Wherefore the respondent prays that this honorable court will pronounce against the demand of the libellants in their aforesaid libel mentioned and set forth, with costs.

(Signed) MARY E. STEIN,
Pp. CHARLES S. RICE.

(Signed) CHAS. S. RICE, *Proctor.*

DISTRICT OF LOUISIANA, *ss:*

Charles S. Rice, of said district, says that he is the proctor and the attorney-in-fact of Mrs. Mary E. Stein, the respondent above named, who resides in Cincinnati, in the State of Ohio, and is now beyond the said district, and that the foregoing answer is true, according to the best of his knowledge and belief.

(Signed) CHAS. S. RICE.

Sworn to and subscribed before me, this 7th day of January, 1879.

(Signed) R. DEVONSHIRE, *D'y Clk.*

36 *Decree of Reference. Extract from the Minutes Special Term.*

MONDAY, *9th May*, 1881.

Court met pursuant to adjournment. Present: Hon. E. C. Billings, judge.

M. H. KOUNS *et al.*
vs.
ST'R CHARLES MORGAN. } No. 11289.

This cause came on to be heard at a previous term of the court, and was argued by counsel, and thereupon and upon consideration thereof court finds that the collision which happened between the steamers Cotton Valley and Charles Morgan was the result of mismanagement and carelessness on the part of those in charge of the Charles Morgan.

It is therefore adjudged and decreed that the libellants, Martin H. Kouns *et al.* do recover from the steamer Charles Morgan all damages they have suffered by said collision, and it is referred to
37 John Devonshire, commissioner, to examine and report the amount of such damage, with power to take any further testimony that may be required.

Rule and Grounds for New Trial. Extract from Minutes of May 11th, 1881.

MARTIN H. KOUNS *et al.*
vs.
ST'R CHARLES MORGAN. } No. 11289.

On motion of C. S. Rice, proctor for claimants, ordered that libellants show cause on 20th instant, at 11 a. m., why a new trial be not granted on the grounds filed.

Grounds Filed.

1st. The decree rendered is contrary to the law and the evidence in this: That the court erred in finding that the collision in question was caused by the negligence or want of skill of the officers and crew of the steamboat Charles Morgan, and was not caused by the negligence and want of skill of the officers and crew of the steamboat Cotton Valley.

38 2d. That the said testimony showed that the steamboat Charles Morgan was in the proper place for a descending boat at the time of the collision in question, and that the Cotton Valley was not in the proper place for an ascending boat.

3d. That the evidence shows that the proper signals were given by the Charles Morgan for the Cotton Valley to stop and reverse her engines, whereby the collision might have been avoided, and said signals were not obeyed.

4th. That the testimony of the witnesses of libellants offered to prove the position of the boats in the river at and previous to the time of the collision is contradictory, incredible, and inconsistent, and shows conclusively that the steamer Cotton Valley was not in the proper place in the river for an ascending boat.

5th. That the court erred in not rejecting the testimony, on cross-examination, of John B. Evelyn, L. McGeary, H. W. Stern,
39 and Albert, taken in the suits of J. H. Menge & *al. vs.* Insurance Cos., Nos. —— & —— of the docket, and of B. D. Wood, taken in said cause, and of John Kouns, James T. O. Pry, Daniel White, and P. Daigre, taken in this cause, for the reasons assigned heretofore herein, and on file.

Marshal's Return.

Received May 12, 1881, by the U. S. marshal, and on May 12th, 1881, I served a true copy of the within order on B. Egan, Esq., by handing the same to him in person, in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Hearing and Submission of Rule for a New Trial. Extract from Minutes of May 20th, 1881.

MARTIN H. KOUNS, *et al.*
vs.
STEAMER CHARLES MORGAN. } No. 11289.

The rule for a new trial came on to be heard, and, having been argued by proctors on both sides, the court took time to consider.

40 *Order—New Trial Refused. Extract from the Minutes of 11th June*, 1881.

M. H. KOUNS *et al.*
vs.
STEAMER CHARLES MORGAN. } No. 11289.

The court having duly considered claimants' motion for a new trial, and perceiving no reason to disturb the judgment heretofore rendered, it is ordered that a new trial be refused.

Report of Commissio ner. Filed June 13th, 1881.

U. S. District Court.

MARTIN H. KOUNS *et al.*
vs.
STEAMER CHARLES MORGAN. } No. 11289.

On the 9th day of May, 1881, this hon. court rendered the following decree in above entitled and numbered suit, viz:

"This cause came on to be heard at *at* a previous term of the court, and was argued by counsel, and thereupon, and upon
41 consideration thereof, the court finds that the collision which happened between the steamers Cotton Valley and Charles Morgan was the result of mismanagement and carelessness on the part of those in charge of the Charles Morgan.

"It is, therefore, adjudged and decreed that the libellants, Martin H. Kouns *et al.*, do recover from the steamer Charles Morgan all damages they have suffered by said collision, and it is referred to John Devonshire, commissioner, to examine and report the amount of such damage, with power to take any further testimony that may be required."

The libel claimed damages in the sum of nineteen thousand four hundred and ninety-four dollars or thereabouts.

Part of these damages was for $1,494 estimated value of clothes, jewelry, &c., lost by the collision, and belonging to Martin H. Kouns, one of the libellants, and his wife.

42 On the reference, evidence was taken to establish the value of the Cotton Valley and above stated personal effects. The estimated average value of the Cotton Valley, as appears from a persual of the evidence, is fixed at fifteen thousand dollars. The evidence shows that the Cotton Valley was purchased by libellants in the month of May, previous to the date of the collision, for the sum of eleven thousand two hundred and fifty dollars; that from the date of purchase and up to or about the date of collison, repairs were put on which enhanced her value. A detailed bill showing these repairs was offered in evidence showing a total of fourteen hundred and sixty-one dollars and forty-four cents; but an inspection of said bill will show charges thereon, which are not in the nature of repairs, and these amount to $108.10, which would leave $1,353.44 as the correct gross amount.

Therefore, from a careful perusal of the evidence as to the value of the Cotton Valley at the time of her sinking by the collision, I would report her value at twelve thousand six hundred
43 and three dollars and forty-four cents; this is estimated on her purchase price in May, and the repairs put on her until she started out in the trade, when she was sunk, which was about the first trip she had undertaken to make since her purchase by libellants. A further claim for damages, in the sum of $2,211.56, for stores, &c., is made and itemized, or a detailed account thereof, with vouchers, has been introduced in evidence; on this account are two

claims for cash, one for $500, and one for $394.90; also certain claims for wages.

These latter should be rejected.

I presume that the $500 item represents the cash on the boat at the time of the collision, and lost, but no evidence has been introduced to show this. Therefore the amount of $2,211.56 is reduced to $1,376.16. There is no doubt that a small portion of the stores and supplies on board, previous to her departure on the trip
44 on which she was sunk, were consumed at the time of the collision, but evidence has been introduced to show that portion and her run taking her hour of departure in connection with the hour of her sinking, which was only a short period of time, would seemingly make it impossible to arrive at any just or fair conclusion.

Captain Kouns says at the time of the collision the boat had $500 in her safe belonging to her which was lost by the sinking of the boat. This has not been contradicted and should be allowed. As to the loss of personal effects, their value at the time of their loss by the collision is not sufficiently established, it is a very difficult task to estimate personal effects, such as wardrobe, which may have been partly used, and the evidence introduced to establish their value is not legal nor sufficient, except as to $75 in money, his wife's watch and chain, valued at $150, and his watch and chain, esti-
45 mated value $155, but 8 years old, as shown by the evidence, which ought to deteriorate its value by ¼, say the present value would be $120.

I therefore report that from the evidence adduced the libellants, Martin H. Kouns *et al.*, should recover damages as follows:

Martin H. Kouns *et al.*, owners of the Cotton Valley, her value at the time of collision, viz, $12,603.44; the amount of stores and supplies lost by the collision, $1,376.16; and the further sum of $500 cash in boat's safe and belonging to boat lost at time of collision; and that Martin H. Kouns, one of the libellants, should recover for the loss of his and his wife's personal effects as follows:

One lady's gold watch and chain, $150; one gentleman's gold watch and chain, $120; and $75 in cash lost at time of collision.

Respectfully submitted,

(Signed) J. DEVONSHIRE, *Commissioner.*

46 *Opposition of Libellants to Report of Commissioner. Filed June 13th, 1881.*

U. S. Dist. Court, E. D. of La.

M. H. Kouns *et al.*
vs.
St'b't Charles Morgan. } No. 11289.

And now come Singleton & Brown and B. Egan, proctors for libellants, and oppose the report of the commissioner filed herein as follows:

1st. That the value of the st'b't Cotton Valley should have been

$15,000 instead of $12,603.44, it being shown, without contradiction, and by every witness in the case, that she was worth at least $15,000.

2d. That the commissioner has not allowed any sum for the furniture of the libellant, M. H. Kouns, lost by the collision.

3d. That the commissioner has not allowed anything for the clothing of the libellant, M. H. Kouns, his wife and daughter, lost by the collision.

Therefore they pray that the sum of $15,000 be fixed as the
47 value of said steamboat Cotton Valley, and that the items for furniture and clothing be allowed as claimed in said libel, and that as thus amended the said report be approved.

And for general relief.

(Signed) SINGLETON & BROWNE,
B. EGAN, *Proctors.*

Opposition of Claimant to the Report of Commissioner. Filed June 15th, 1881.

U. S. District Court, Eastern District of Louisiana.

M. H. KOUNS *et al.*
vs.
STEAMBOAT CHARLES MORGAN. } No. 11289.

Comes claimant and for opposition and exception to the report of the commissioner filed herein on the 13th of June, 1881, say as follows:

1st. That the suit filed by libellants claimed only as damages the value of the steamboat Cotton Valley, and certain personal effects, such as wearing apparel and jewelry mentioned in the ex-
48 hibit to the libel of the libellant annexed, alleged to have a value of $1,494; that said report allows as damages to the libellants the following items not in said libel sued for, to wit: Stores and supplies, $1,376.16; cash in boat's safe, $500.

2d. That there was no legal proof of any repairs placed upon the Cotton Valley after her purchase by the libellants.

Wherefore claimant prays that the said report of the commissioner be amended by striking the items above mentioned therefrom, and that she have general relief.

(Signed) CHAS. S. RICE, *Proctor.*

Hearing and Submission of Report. Extract from the Minutes May Term, 1881.

WEDNESDAY, 15 *June*, 1881.

Court met pursuant to adjournment.

Present: Hon. E. C. Billings, judge.

M. H. KOUNS *et al.*
vs.
ST'B'T CHARLES MORGAN. } No. 11289.

49 This cause [came] on to be heard on the commissioner's report on damages, and having been argued by proctors on both sides, the court took time to consider.

Judgment.

MARTIN H. KOUNS *et al.*
vs.
STEAMBOAT CHARLES MORGAN. } No. 11289.

This cause came on to be heard on the commissioner's report, the exceptions thereto, and was argued by counsel.

On consideration thereof it is ordered, adjudged, and decreed that the report be so amended as to strike out item $1,376.16, value of stores and supplies lost by the collision, and by allowing $150 for furniture, and $100 for clothing lost; that thus amended the report be confirmed, all exceptions overruled, and that the libellants, Martin H. Kouns *et al.*, do have and recover from the steamboat Charles Morgan the sum of thirteen thousand six hundred
50 and ninety-eight $\frac{44}{100}$ dollars, with 5 per cent. interest from the 1st day of December, 1878, till paid, and costs of suit.

And whereas said steamer was released from seizure and restored to the owner on giving bond, conditioned as the law directs, in the sum of $17,500, the appraised value of said steamer, said bond signed by Albert Stein, master and lawful bailee for his wife, Mary E. Stein, of Ohio, sole owner, as principal, and by A. Martin and T. P. Leathers, B. D. Wood, and Wm. Fagan, each in the sum of forty-three hundred and seventy-five dollars, as sureties, it is further adjudged and decreed that the aforesaid Mary E. Stein, by Albert Stein, bailee, as principal, and said A. Martin, T. P. Leathers, B. D. Wood, and Wm. Fagan, as sureties on said release bond, (said sureties to the extent of the amount for which each bound himself,) be condemned jointly and severally to pay the amount of the foregoing judgment for $13,698.44, interest and costs.

Judgment rendered June 16, 1881.

Judgment signed June 17, 1882.

(Signed) EDWARD C. BILLINGS, *Judge.*

51 *Motion and Order of Appeal. Entered and Filed June 18th,* 1881.

U. S. District Court, Eastern District of Louisiana.

M. H. KOUNS *et al.*
vs.
STEAMBOAT CHARLES MORGAN. } No. 11289.

On motion of Chas. S. Rice, proctor for claimant and for Burris D. Wood, Thomas P. Leathers, William Fagan, and Alphonse Martin, sureties on the release bond given in this cause, and on suggesting to the court that they are aggrieved by the final decree rendered herein, and desire to appeal therefrom to the circuit court of the United States for the said district, the said appeal to operate as a supersedeas, it is ordered by the court than an appeal from the said final decree be granted these movers to operate as a supersedeas, upon their filing bond with good and sufficient surety thereon in

the sum of $1,000, conditioned as the law requires, and that
52 said appeal be made returnable to the circuit court of the United States of said district, to which said appeal is granted on the first Monday of November next.

Appeal Bond. Filed 25th June, 1881.

United States of America, Eastern District of Louisiana. In Admiralty.

M. H. KOUNS *et al.*
vs.
STEAMBOAT CHARLES MORGAN. } 11289.

Know all men by these presents, that we, Mary E. Stein, wife of Albert Stein, Burris D. Wood, Thomas P. Leathers, William Fagan, and Alphonse Martin, as principals, and Louis Schwartz and Oscar A. Schneican as sureties, are held and firmly bound *in solido* unto Martin H. Kouns and William T. Scovell in the sum of one thousand dollars, to be paid to the said Martin H. Kouns and William T. Scovell, for the payment of which well and truly to be made in
53 lawful money of the United States, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents; sealed with our seals, and dated at New Orleans the 25th day of June, 1881.

Whereas the above-named Mary E. Stein, wife of Albert Stein, Burris D. Wood, Thomas P. Leathers, William Fagan, and Alphonse Martin have appealed to the next term of the circuit court of the United States for the 5th circuit and eastern district of Louisiana, from a final judgment of the district court of the United States for said district, rendered against them on the 16th day of June, 1881, and signed on the 17th day of June, 1881, in the above-entitled cause:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect and answer all damages and costs and satisfy whatever
54 judgment may be rendered against them if they fail to make their appeal good, then this obligation to be void; otherwise, the same shall be and remain in full force and effect.

Signed	MARY E. STEIN.	[L. S.]
"	B. D. WOOD.	[L. S.]
"	T. P. LEATHERS.	[L. S.]
"	WM. FAGAN.	[L. S.]
"	AEPHONSE MARTIN.	[L. S.]
"	LOUIS SCHWARTZ.	[L. S.]
"	O. A. SCHNIEDAN.	[L. S.]

Oscar A. Schneidan, surety on the within appeal bond, being duly sworn, says: That he resides in this city, and is worth the sum of $1,000 over and above his just debts and liabilities.

Signed O. A. SCHNEIDAN.

Sworn to and subscribed before me, this 25th day of June, 1881.

(Signed) K. LOEW,
Comm'r U. S. Circuit Court East Dist. of La.

Louis Schwartz, surety on the within bond of appeal, being
55 duly sworn, says: That he resides in the city of New Orleans, and is worth the sum of one thousand dollars over and above his just debts and liabilities.

(Signed) LOUIS SCHWARTZ.

Sworn to and subscribed before me, this 28th day of June, A. D. 1881.

(Signed) K. LOEW,
U. S. Commissioner.

Bond and sureties approved June 28, 1881.

(Signed) DON A. PARDEE,
Circuit Judge.

Petition of Appeal by Libellants and Order allowing same. Filed October 17th, 1881.

U. S. District Court, E. D. of Louisiana.

MARTIN H. KOUNS *et al.*
vs.
THE ST'B'T CHARLES MORGAN. } No. 11,289.

To the hon. the judge of the district court of the United States for the eastern district of Louisiana:

56 The petition of Martin H. Kouns and Wm. T. Scovell-libellants in the above-entitled and numbered cause, respect, fully shows:

That a final judgment was rendered herein on the 16th June, 1881, and signed on the 17th day of June, 1881, wherein, as libellants are informed and believe, there is error to their prejudice, and from which they can only obtain relief by an appeal to the circuit court of the United States, fifth circuit and eastern district of Louisiana.

Wherefore your libellants pray that an appeal from said judgment be granted to your libellants, returnable to the circuit court of the United States, fifth circuit, eastern district of Louisiana, on the 1st Monday of November, 1881, upon libellants giving a bond for costs, with good and solvent security, and conditioned according to law, in the sum of five hundred dollars.

And your libellants pray for all such further order and decree as may be requisite and for general relief.

(Signed) SINGLETON & BROWNE AND
57 B. EAGAN,
Proctors for Libellants.

Let the appeal from the within-mentioned judgment be allowed as prayed for, and let the amount of bond on the appeal be fixed at the sum of five hundred dollars.

Oct. 5th, 1881.

(Signed) EDWARD C. BILLINGS, *Judge.*

Appeal Bond. Filed October 17th, 1881.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

District Court of the United States. In Admiralty.

MARTIN H. KOUNS *et al.*
vs.
ST'B'T CHARLES MORGAN. } No. 11289.

Know all men by these presents, that we, Martin H. Kouns and William T. Scovill, as principals, and C. P. McCan, as surety, are held and bound unto the said st'b't Charles Morgan and
58 owners, for the payment of which, well and truly made in lawful money of the United States, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seal-, and dated at New Orleans, the 7th day of October, 1881.

Whereas the above-named Martin H. Kouns and W. T. Scovill have appealed to the next term of the circuit court of the United States for the 5th circuit and eastern district of Louisiana from a final judgment of the district court of the United States for said district, rendered against them on the 16th day of June, 1881, and signed on the 17th day of June. in the above-entitled cause:

Now, therefore; the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and cests, and satisfy whatever judgment may be rendered against them if they fail to make their appeal
59 good, then this obligation to be void; otherwise the same shall remain in full force and effect.

(Signed) SINGLETON & BROWN & B. EGAN, [L. S.]
Proctors for Martin H. Kouns.

(Signed) W. T. SCOVIL. [L. S.]

(Signed) C. P. McCAN. [L. S.]

C. P. McCan,, Esq., surety on the within appeal bond, being duly sworn, says: That he resides in this city, and is worth the sum of $1,000, over and above his just debts and liabilities.

(Signed) C. P. McCAN.

Sworn to and subscribed before me, this 7th day of October, 1881.

[SEAL.] (Signed) W. J. CASTEL, *Not. Pub.*

Bond approved, both as to amount and as to sufficiency of surety. October 5th, 1881.

(Signed) EDWARD C. BILLINGS, *Judge.*

60 *Clerk's Certificate.*

District Court of the U. S. for the Eastern District of La.

CLERK'S OFFICE.

I hereby certify that the foregoing — pages forming part second, together with the — pages of part first, do contain and form a cor-

rect and complete transcript of the originals on file and of the record in the matter of Martin H. Kouns *et al. vs.* St'r Charles Morgan, captain, & *al.*, No. 11289 of the docket, with the exception of the plans mentioned in my certificate to part first.

In testimony whereof I hereto set my hand and the seal of our said court at New Orleans, this 17th day of October, 1881.

(Signed) JNO. DEVONSHIRE, *Clerk.*
Per K. LOEW, *D'y Clerk.*

61 Proceedings in the circuit court of the United States, eastern district of Louisiana:

Supplemental and Amended Libel Filed November 8th, 1881.

U. S. Circuit Court, E. Dist. of La.

KOUNS *et al.*
vs.
ST'R CHARLS MORGAN. } No. ——.

To the hon. the judges of the circuit court of the United States, fifth circuit, eastern district of Louisiana:

The supplemental and amended libel of Martin H. Kouns and William T. Scovil (libellants) to their original libel against the steamboat Charles Morgan, filed on the 7th day of December, 1878, and now pending on appeal in the court, in a cause of collision, civil and maritime, articulately alleges and propounds as follows:

1st. That all the allegations and averments made and con*con*tained in the original libel filed by libellants against the
62 St. Bt. Charles Morgan are true and correct, and are reiterated herein and adhered to and pray that the same may be considered as a part hereof.

2d. That, in addition to the damages and losses stated and alleged in the original libel of these libellants as caused by said collision between the steamboats Cotton Valley and Charles Morgan, on the 1st day of December, 1878, in the vicinity of Bringier's Point, in the Mississippi, and for which the Charles Morgan and her owners are responsible, are the following, to wit: For twelve hundred and sixty-four $\frac{1}{100}\frac{6}{0}$ dollars, supplies and stores on the Cotton Valley, which had been furnished just prior to her leaving New Orleans on the voyage on which she was sunk, and which were for her equipment for said voyage, and for eight hundred and ninety-four $\frac{9}{1}\frac{0}{0}\frac{0}{0}$ dollars in cash, which were in the iron safe of said steamboat, and on board of her when she was sunk; and for fifty-two $\frac{5}{1}\frac{0}{0}\frac{0}{0}$ dollars, wages expended and paid to her pilots and clerks; all of which was
63 totally lost to libellants by the illegal, wrongful, negligent, and car-less acts and the careless and unskillful navigation of the said steamboat Charles Morgan, and for which said steamboat and her owners are bound to the libellants; that all of the details of said supplies, moneys, stores, and wages are set forth in Exhibit 1 and the vouchers therewith offered on behalf of the libellants in

the district court, and which are now at pp. — of the transcript filed in this court, and is herewith referred to, and they pray that the same may be taken and considered as an exhibit hereto.

3d. That all of said damage and loss herein alleged, in addition to those claimed in the original libel, were solely caused by the negligent, careless, unskillful, and illegal navigation of st'boat Charles Morgan, as aforesaid, whereby the st'boat Cotton Valley was run into and nearly cut in two, and wholly lost and sunk; and that the
64 said Charles Morgan and her owners are bound to reimburse and pay libellants for said loss and damage aforesaid the sum of twenty-two hundred and eleven $\frac{56}{100}$ dollars, with legal interest from the 1st day of December, 1878.

4th. That all and singular the premises are true and within the admiralty jurisdiction of this hon. court.

Wherefore Martin H. Kouns and William T. Scovill pray leave to file this supplemental and amended libel, and that after due proceedings they have and recover judgment against the steamboat Charles Morgan and her owners, in addition to the sum claimed and demanded in their original libel the sum of twenty-two hundred and eleven $\frac{56}{100}$ dollars. with legal interest from the 1st December, 1878, until paid, with all costs. And for all such further order and relief in the premises as the court is competent to give or that equity will admit.

(Signed) SINGLETON & BROWNE,
B. EGAN,
Proctors.

(Signed) WM. T. SCOVELL.

65 Subscribed and sworn before me by said Scovell, Nov. 7th, 1881.

(Signed) T. V. COUPLAND,
Comm'r U. S. Circuit Court, Eastern District of Louisiana.

Let the within supplemental and amended libel be filed as prayed for.

November 8th, 1881.

(Signed) DON A. PARDEE, *Judge.*

Motion and Order Subrogation to Hibernia Insurance Company.

Extract from the Minutes. November Term, 1881.

NEW ORLEANS, FRIDAY, *November 18th*, 1881.

Court met pursuant to adjournment.

Present: Hon. Don A Pardee, circuit judge.

M. H. KOUNS *et al.*
vs.
S'T. B'T CHARLES MORGAN. } No. 9664.

On motion of Singleton & Browne and B. Egan, proctors for the (plaintiffs) libellants herein, and upon filing the foregoing assign-

ment, transfer, and subrogation on behalf of the libellants,
66 owners of the steamboat Cotton Valley—

It is ordered that the Hibernia Insurance Company of New Orleans be, and is hereby, subrogated (with leave to prosecute the same in the name of the libellants) in and to the judgment rendered by the district court of the United States for the eastern district of Louisiana in the above-entitled cause, and now on appeal to this court, for the sum and to the extent of five thousand and six hundred dollars, with interest thereon from 5th February, 1879, as decreed in said judgment.

Hearing and Continuance. Extract from Minutes of December 19th, 1881.

M. H. KOUNS *et al.*
vs.
ST'B'T CHARLES MORGAN. } No. 9664.

This cause came on to be heard on the transcript of the record from the district court of the United States for this district, and upon the supplemental and amended libel therein filed in this
67 court and the exception thereto, and the said exception was argued by the proctors for the parties respectively, and submitted, and the court took the same under advisement.

And thereupon the cause on the merits was proceeded with, and after hearing the same partially, it was continued until Thursday, 22d instant, at 11 a. m.

Exception to Amended Libel. Filed Dec'r 19th, 1881.

U. S. Circuit Court, East. Dis't of La. In Admiralty.

M. H. KOUNS *et al.*
vs.
STEAMBOAT CHARLES MORGAN, etc. } No. 9664.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The exception of Mary E. Stein, wife of Albert Stein, claimant, to the supplemental and amended libel filed in this cause in this honorable court on the 8th day of November, 1881.

68 That the said amended libel presents for the first time to this honorable court a new and distinct demand never litigated in or passed upon in the district court; that no question relative to such demand has been brought up on appeal; that no demand of the sort mentioned in said libel can originate in a court of appeals.

And therefore the said claimant and defendant prays that the said amended libel may be dismissed, with costs.

(Signed) CHAS. S. RICE, *Proctor.*

Hearing and Submission. Extract from Minutes of February 8th, 1882.

M. H. KOUNS *et al.*
vs.
ST'B'T CHARLES MORGAN. } 9664.

This cause came on to be heard upon the transcript of the record from the district court of the U. S. for this district, and was argued by the proctors for the parties, respectively, and submitted,
69 and the court took time to consider.

Findings and Judgment. Entered and Filed March 18th, 1882.

United States Circuit Court, Eastern District of Louisiana. In Admiralty, on Appeal.

M. H. KOUNS *et al.*
vs.
STEAMBOAT CHARLES MORGAN. } No. 9664.

This cause came on to be heard upon the transcript of the district court, the amended libel and exception, and evidence in the case, and was argued; whereupon the court, being advised in the premises, finds the following as the facts of the case:

First. That about four o'clock in the morning of December 1st, 1878, in the Mississippi river near Bringier's Point, about three miles below Donaldsonville, there was a collision between the steamboat Charles Morgan and the steamboat Cotton Valley, re-
70 sulting in the total loss of the latter-named boat and cargo, and a damage to the libellants, her owners, in the sum of fifteen thousand and seventy-four and $\frac{60}{100}$ dollars.

Second. That the Cotton Valley, bound for Red River, was the ascending boat, and the Charles Morgan, bound for New Orleans, was the descending boat, each boat being properly officered and manned, and having proper watches and proper lights set.

Third. That prior to the collision the Cotton Valley was in her proper position in the river near the left bank, following up the Bringier Point preparatory to rounding the same, while the Charles Morgan was above the point, perhaps in the middle of the river, but heading across and near the point to a woodyard light, in the bend of the river below the point.

Fourth. That when the respective boats were in the positions just described, the Cotton Valley blew one whistle as a signal
71 that she would pass the Charles Morgan to the right, which signal the Charles Morgan answered with one whistle, as a signal that the pilot of the Morgan understood, and would also pass to the right.

Fifth. Both boats kept on their respective courses, approaching each other, when the pilot of the Morgan sounded three or four short whistles, stopped the Morgan's engines, and soon commenced backing the wheels, but not enough to stop the Morgan's headway, and without in any wise changing her course to starboard or port.

Meanwhile, the Cotton Valley, rounding the point, at the three

or four short whistles given by the Morgan, understanding the signal as a hail, stopped the engines.

At this time the boats were within one hundred yards of each other, the Morgan, with her headway and the current, coming straight on without changing her course, the pilot of the Cotton Valley, foreseeing an inevitable collision if he remained still, started the Cotton Valley ahead, sheering to starboard; but this for-
72 warding of the Cotton Valley was too late, for almost immediately the Charles Morgan, head on, struck her on the port side, about twenty-five feet forward of the stern, and at an angle of about sixty degrees, with such force as to cut through her guards into her hull nearly to the kelson, and cause her to sink in about ten minutes.

Sixth. That the Charles Morgan and her officers were in fault, as the proper position of the boat was nearer the middle of the river, and as her officers disregarded the passing signal given and answered, and made no effort to change the boat's course to the starboard, by which the boats would have been so separated that a collision would have been avoided.

Seventh. That the Cotton Valley was not in fault, as she was in her proper place as the ascending boat, and as she gave the proper signal for passing.

The failure of the pilot to understand the signal of three or four short whistles given by the Morgan was not, under the circumstances of the case, a fault; and if the starting of the Cotton
73 Valley's engines and sheering to starboard when the Morgan was upon them was an error, it was an error of judgment in extremes, not putting the boat in fault.

Eighth. That libellants, Martin H. Kouns and William T. Scovell, were the owners of the said Cotton Valley, and by the collision aforesaid have suffered damages as set forth in original libel, in loss of boat, cargo, stores, wearing apparel, jewelry, in the sum of thirteen thousand six hundred and ninety-eight & $\frac{44}{100}$ dollars, and as set forth in the supplemental libel in the sum of one thousand three hundred and seventy-six and $\frac{16}{100}$ dollars.

Ninth. That pending proceedings in this case, and after libel filed and seizure of the Charles Morgan, the said steamboat was claimed by Mary E. Stein as owner, and was released and restored to her on her giving bond, conditioned as the law directs, in the sum of seventeen thousand five hundred dollars, the ap-
74 praised value of said steamboat, which bond was given by Mary E. Stein, as principal, and by A. Martin, T. P. Leathers, B. D. Wood, and Wm. Fagan, each in the sum of forty-three hundred and seventy-five dollars, as sureties.

And thereupon the court finds as conclusions of law—

First. That the amended and supplemental libel was properly allowed and filed, and that the exception thereto should be overruled.

Second. That the libellants are entitled to recover from the steamboat Charles Morgan and Mary E. Stein, claimant, and her sureties on the release bond, the full amount of the damages suffered by the said libellants and proved in this case, to wit, the sum of fifteen

thousand and seventy-four & $\frac{60}{100}$ dollars, and interest and costs, in all not exceeding the sum of seventeen thousand five hundred dollars, the amount of the release bond.

It is therefore ordered, adjudged, and decreed that the libellants, Martin H. Kouns and William T. Scovell, do have and re-
75 cover from the steamboat Charles Morgan the sum of fifteen thousand and seventy-four & $\frac{60}{100}$ dollars, with five per cent. interest thereon from December 1st, 1878, till paid, and costs of suit.

And whereas said steamboat was released from seizure and restored to the owner, on giving bond, conditioned as the law directs, in the sum of seventeen thousand five hundred dollars, the appraised value of said steamboat, said bond signed by Albert Stein, master, and lawful bailee for his wife, Mary E. Stein, of Ohio, sole owner, as principal, by A. Martin, T. P. Leathers, B. D. Wood, and William Fagan, each in the sum of forty-three hundred and seventy-five dollars, as sureties; it is further ordered, adjudged, and decreed that the said Mary E. Stein, as principal, and the said A. Martin, T. P. Leathers, B. D. Wood, and William Fagan, as sureties, (each to the extent of the amount for which he bound himself in said release bond,) be condemned, jointly and severally, to pay the foregoing judg-
76 ment of fifteen thousand and seventy-four and $\frac{60}{100}$ dollars, interest and costs.

Judgment rendered and signed March 18th, 1882.

(Signed) DON A. PARDEE, *Judge.*

Motion and Order Allowing Ten Days to File Bill of Exceptions. Extract from Minutes of March 18th, 1882.

MARTIN H. KOUNS *et al.*
vs.
STR. BOAT CHARLES MORGAN. } No. 9664.

On motion of Charles S. Rice, proctor for the claimant herein: It is ordered by the court that ten days be allowed him to file bills of exceptions.

Motion & Order Further Time Allowed to File Bills of Exceptions. Extract from Minutes of March 28th, 1882.

M. H. KOUNS *et al.*
vs.
ST'B'T CHARLES MORGAN. } No. 9664.

On motion of Chas. S. Rice, proctor for claimant, and on suggesting that he desires more delay for preparing his bills of exceptions herein:

77 It is ordered by the court that a further delay of seven days be granted him for filing such bills of exceptions.

Motion & Order for Appeal. Entered & Filed March 30th, 1882.

M. H. KOUNS *et al.*
vs
ST'B'T CHARLES MORGAN, Etc., } No. 9664.

On motion of Charles S. Rice, proctor for Mary E. Stern, claimant,

joined and aided by her husband, Albert Stein, by whom she has been duly authorized, and for Thomas P. Leathers, Burns D. Wood, Alphonse Martin, and William Fagan, sureties, all defendants herein, & on suggesting to the court that they are informed, and believe, that there is error to their prejudice in the final decree herein rendered & signed on the 18th day of March, 1882, & that they are desirous of appealing therefrom to the Supreme Court of the United States, said appeal to operate as a supersedeas:

It is ordered by the court that an appeal from said cause be allowed to the above named claimant and sureties, all defendants herein, to act as a supersedeas returnable to the Supreme Court of the United States on the second Monday of October, 1882, upon their giving bond, with good & solvent security, in the sum of $4,000, conditioned according to law, the court considering that the said claimant has already given bond for the release of the property libelled in the sum of seventeen thousand five hundred dollars.

78 *Bill of Exceptions No.* 1. *Filed April 8th*, 1882.

Circuit Court of the United States for the Eastern District of Louisiana.

M. H. KOUNS *et al.*
vs.
STEAMBOAT CHARLES MORGAN. } No. 9664.

Be it remembered that at a general term of this honorable court and at a general session thereof, held at the city of New Orleans, in the eastern district of Louisiana, on the 19 day of December, A. D. 1881, and in open court, proctor for claimant offered in evidence a certified copy of the finding of the Board of Local Inspectors of Steam Vessels, dated office of the United States Board of Local Inspectors of Steam Vessels, New Orleans, December 18, 1878, being their decision in the case of the collision between the steamers Cotton Valley and Charles Morgen, and signed by C. B. Johnson
79 and J. A. Moffat, United States local inspectors, which copy is hereto annexed for the purpose of being made a part of this bill.

2d. The original of a document purporting to be the appeal of Martin H. Kouns, one of the libellants in this suit, from said findings of said board, to the district inspectors of steam vessels at New Orleans, dated — day of ———, 1879. And third, the report and findings of said district inspector at New Orleans affirming the findings of said local inspectors of steam vessels on said appeal, both of which documents 2d & 3rdly above mentioned are hereto annexed as part of this bill for the purpose of showing, among other things, that immediately after the collision in question, said collision formed the subject of an inquiry before the said board of local inspectors.

To the introduction of which documents proctor for libellants objected and assigned as reasons for said objections—

80 1st. That the matters therein inquired of and reported upon by said board were and are *res inter alios acta.*

2d. That the inquiry in that case are in reference to the conduct of the officers under the §§ 4439, 4440, and 4450 of the Revised Statutes of the United States.

3d. That the plaintiffs in this case are not parties to that inquiry.

4th. That the finding of the local board was based upon testimony of witnesses taken *ex parte* and with no opportunity to the libellant for cross-examination, which objections, being sustained by the court, and the said testimony rejected, proctor for claimant reserved his exceptions then and there to the ruling of the court, and now presents his bill containing said exceptions, pray the court will sign the same.

(Signed) DON A. PARDEE, *Judge.*

Certified copy of the Finding of the Board of Local Inspectors of Steam Vessels annexed to and made part of the foregoing Bill of Exceptions.

OFFICE U. S. BOARD LOCAL INSPECTORS OF STEAM VESSELS,
81 NEW ORLEANS, LA., *Dec.* 18*th*, 1878.

Decision in the Case of Collision between the Steamers Cotton Valley and Charles Morgan.

We have carefully studied the testimony given in the case and find the Cotton Valley ascending and the Charles Morgan descending the river on the morning of the 1st inst. at about four o'clock, it being very dark, the wind blowing hard, and raining heavy, at a place about two miles below Donaldsonville, near Bringier's point, where a collision occurred, whereby the cotton Valley was sunk and 3 lives lost. We find the Charles Morgan in her proper place in the river for a descending steamer, fully officered as the law requires, both pilots in the pilot-house at the time, as also the captain, where he had gone to keep out of the hard rain then falling, the first mate on watch and at his post, the steamer backing before and at the time of the collision, and afterwards to rescue the people of the ill-fated steamer.

We find that the Cotton Valley was not in her proper place
82 for an ascending steamer; that her captain had not been on watch since eleven o'clock of the night of the collision; that her first mate had not been on watch since immediately after leaving this city till about four o'clock in the morning of the collision, both of which we deem gross neglect of duty, especially on such a night.

Mr. Swain, the pilot on watch on the Cotton Valley, was evidently mistaken in his position in the river, as the testimony shows that the collision occurred in or near the middle of the river. When he stood out to turn Bringier's Point, (which was a starboard point), the night being very dark, and the wind blowing off the starboard shore, he missed his calculation, and we find him out of his place. We also find that the Cotton Valley's engines were not stopped until

her bow had passed across the bow of the Charles Morgan, nor were they backed at all.

We believe that if either the captain or the first mate of the
83 Cotton Valley had been on watch and at his post the collision would not have occurred.

We see no evidence on the part of the officers of the Cotton Valley w-ere the licensed officers did anything to save the lives of the cabin or deck passengers either through supplying them with life-preservers, or even suggesting their use, and especially was one poor unfortunate lady allowed to drown with only a simple invitation to jump overboard, whereas, had she a life-preserver on, she would doubtless have floated until she could have been rescued by the yawl of the Charles Morgan.

The act of Captain Kouns in allowing only his wife and two children and Mrs. Sanford in a life-boat that was capable of carrying fifteen persons is reprehensible in the extreme. Captain Kouns is also responsible for the deck of his vessel being in charge of the 2d mate, an officer not required to be licensed, who was in charge of the deck from six o'clock p. m. to four o'clock a. m., a most un-
84 usual watch.

We have, therefore, this day, in accordance with section 4439 and 4440 of the Rev. Stat., for inattention to duty, revoked the licenses of M. H. Kouns and W. A. Duké, respect*fu*lly master and mate of the ill-fated Cotton Valley, and suspended the license of A. G. Swain, the pilot on watch on the Cotton Valley, for a period of thirty days from the date hereof, in accordance with Sec. 4450 of the Rev. Statutes, for unskillful management, inattention to duty, and neglect; and we hereby exonerate the licensed officers of the Charles Morgan from all blame.

(Signed) C. B. JOHNSON,
" J. A. MOFFETT,
U. S. Local Inspectors.

We, the undersigned, local inspectors of steam vessels for the district of New Orleans, do hereby certify the foreging decision to be a true copy of the original on file in this office.

(Signed) C. P. JOHNSON,
[SEAL.] J. A. MOFFETT,
U. S. Local Inspectors.

85 Office of U. S. Local Inspectors of Steam Vessels, district of New Orleans, New Orleans, April 1st, 1879.

86 *Bill of Exceptions No. 2. Filed April 8th,* 1882.

United States Circuit Court for the Eastern District of Louisiana.

M. H. KOUNS *et al.*
vs. } No. 9664.
STEAMBOAT CHARLES MORGAN, Etc.

Be it remembered that at a general term of this honorable court,

and on the trial of this cause therein, on the 19th day of December, A. D. 1881, and in open court, proctor for claimant having offered the testimony of Albert Stein and Harry W. Stein, taken and reduced to writing in the city of New Orleans for the purpose of being used as evidence in this cause, and the testimony of Sylvester Doss, John B. Evelyn, and Livingston McGeary, taken at Cincinnati, in the State of Ohio, under a commission duly issued by said court in this cause for the purpose of obtaining the testimony of said witnesses, to be used on behalf of said claimant on the trial of said cause, all the said testimony being offered and introduced as
87 tending to prove, among other things, that at and previous to the collision in question between the steamboats Cotton Valley and Charles Morgan, the said steamboat Cotton Valley had not her proper watches set, and had but one of the lights, to wit, the light on the outboard side of her starboard smoke-pipe, and no light on the outboard side of her port smoke-pipe, thus violating the rules and regulations for the government of pilots navigating the rivers flowing into the Gulf of Mexico and their tributaries, adopted by the Board of Supervising Inspectors of Steam Vessels, as authorized by the act of Congress of February 28, 1871, to take effect January 1st, 1872, and especially of so much of the 16th of said rules as provides that signal-lights for steamers navigating said waters to be exhibited from sunset until sunrise shall be a red light on the outboard side of the port smoke-pipe and a green light on the outboard side of the starboard smoke-pipe, to show forward and abeam on
88 their respective sides, which 16th rule had been by claimant offered and introduced in evidence, and is hereto annexed as part of this bill.

Which said evidence was offered and introduced as tending also to show that at the time of and prior to the collision in question the steamboat Cotton Valley was not in the proper position in the river for an ascending steamboat, to wit, on the left bank thereof, following up the Bringier Point, but that she was on or near the other or right bank of said river in the bend, and that she ascended along said bank so as to shut out the view of said witnesses Albert Stein, Sylvester Doss, and John B. Evelyn, then in the pilot-house of the steamboat Charles Morgan, then descending said river, and in the middle thereof and headed towards a certain light shown by the mark "Ø," on a certain map introduced in evidence, marked "B," and now made part of this bill; said light, as she, the Cotton Valley, headed out from shore into and up the river, and grad-
89 ually changed her direction towards Bringier's Point, on the opposite side of and a little higher up the river than said light, and ran across the bow or course of the Charles Morgan, which said testimony was also offered and introduced as tending to show that the steamboat Charles Morgan, having backed out into the river from Donaldsonville just before four o'clock in the morning of December 1, 1878, took her position, descending the Mississippi river, near the middle of said river, not deviating therefrom, but taking for her objective point the said light on shore in said bend

opposite to and a little below Bringier's Point up to the moment of the collision, and that immediately after the exchange of signals of one whistle by both boats the pilot of the Charles Morgan, being apprehensive that the Cotton Valley, from the position she was then in, would be unable to pass the Charles Morgan to the right, as the signal given by her and replied to by the Charles Morgan had indicated, immediately stopped and reversed his engines, backing
90 them strong with all his steam, at the same time causing four short blasts of his whistle to be given as a signal of danger to the Cotton Valley, and for her to stop and back her engines until the possibility of a collision was avoided; that the Cotton Valley did not stop her engines until she was almost in front of, and across the bow of the Charles Morgan, and did not reverse them at all; that by regarding said signal of four short whistles according to the intention of the pilot of the steamboat Charles Morgan, the said collision would have been avoided; that the boats were from two hundred to five hundred yards apart when said signal of danger was given, and a distance sufficient for stopping if the signal had been acted upon by the pilot of the Cotton Valley; that at the moment of the collision the headway of the Charles Morgan was quite or nearly stopped; that at the time when the first sig-
91 nals were exchanged, the Cotton Valley having changed her course from the right bank in the bend out into and up the river, was bearing, as seen from the pilot house of the Charles Morgan, between the starboard smoke-pipe and starboard derrick of said Charles Morgan, and a change in the course of the Charles Morgan at that time to the right would have caused a collision inevitably between the two boats, but lower down the river, and that it was the exercise of prudence and good judgment on the part of the pilot of the Charles Morgan, on duty, to stop and reverse his engines, and to cause the four short whistles, indicative of danger, to be given; that at the time of the exchange, and giving of the first signal by the Cotton Valley, and the reply thereto by the Charles Morgan, it was the opinion of the pilot of the latter and of Sylvester Doss, who was in the pilot house with him, that the Cotton Valley was out of her place,
92 but that it was feasable for her to pass to the right, as her signal indicated she desired to do. That doubts or fears of misunderstanding signals are expressed by several short sounds of the whistle in quick succession, as further appears by the second of the aforesaid rules and regulations for the government of pilots of steamers, etc., offered in evidence on the trial of this cause and hereto annexed as part of this bill.

That at the time of the collision in question, there was a current in the Mississippi river at the place of said collision, of about two miles an hour; that the wind was blowing strongly from the left or east bank towards the other bank, quartering down the river. That after remaining near the wreck of the Cotton Valley, for the purpose of rendering assistance to her passengers and crew, and without use of her steam or wheels, the Charles Morgan drifted and was blown against the right or west bank of the river almost
93 opposite to the point where said collision occurred, and landed

just above the place where the light on shore mentioned was or had been burning.

Whereupon, and as tending to impeach and contradict, and for the purpose of impeaching and contradicting said evidence of said witnesses, proctor for libellants then and there offered in evidence the certain depositions purporting to be and contain the testimony of said Captain Albert Stein, Sylvester Doss, John B. Evelyn, Livingston McGeary, and Harry W. Stein, taken in the office of the clerk of the United States district court for the district of Louisiana, to be used as evidence in the suits of J. H. Menge *et al. vs.* Hibernia Insurance Company, and J. H. Menge *vs.* Teutonia Insurance Company, numbered, respectively, 11319 and 11320 of the docket of said district court of the the United States for the eastern district of Louisiana, to which causes, or either of them, the claimant
94 herein was not a party, and without having first exhibited the said depositions, or either of them, purporting to be the evidence of said witnesses in said causes respectively to the said witnesses, or to either of them, and without having in any other manner verified the contents of said purported depositions to be the evidence of said witnesses in said causes.

To the introduction of which purported depositions of said witnesses so taken in said causes, proctor for claimant then and there objected, on the ground that no basis for offering said purported depositions had been laid, it not having been shown or pretended that said purported depositions were ever submitted to the said witnesses, or otherwise verified as their evidence in said causes; which objections having been overruled by the court, and the said depositions admitted as evidence for the purpose stated, to wit, as tending to impeach and contradict, and for the purpose of impeaching and contradicting the said evidence of said witnesses given in this cause, proctor for claimant excepted to the ruling of the court, and
95 now presents this his bill of exceptions, and prays that the same may be signed by the court.

By the COURT: In the cross-examination of each of said witnesses in this case, the attention of the witness was called to the evidence given by him in the cases of Menge *vs.* Insurance Companies (which were cases growing out of the same collision propounded in the libel herein), and the said witnesses were specifically examined as to the correctness of said evidence, and admitted having testified therein.

At the offering, no objection was made that the evidence offered was not the evidence of said witnesses respectively, or that the same had been improperly taken and reported.

(Signed) DON A. PARDEE, *Judge.*

Rule 16, m-de part of foregoing bill of exceptions:

RULE 16. Lights.—For steamers navigating waters flowing into the Gulf of Mexico a red light on the outboard side of the port smoke-pipe & a green light on the outboard side of the starboard smoke-pipe, these lights to show both forward and abeam of their respective sides.

Rule No. 2, made part of foregoing bill of exceptions:

Should steamers be likely to pass near each other, & these signals should not be made & answered by the time such boats shall have arrived at a distance of 800 yards from each other, the engines of both boats shall be stopped; or should the signal be given and not properly understood, from any cause whatever, both boats shall be backed until their headway shall be fully checked, & the engines shall not be again started ahead until the proper signals are made, answered, and understood. Doubts or fears of misunderstanding signals shall be expressed by several short sounds of the whistle in quick succession.

(Here follows map, marked p. 95.)

96 *Bill of Exceptions No. 3. Filed April 8th*, 1882.

United States Circuit Court for the Eastern District of Louisiana.

M. H. KOUNS *et al.*
vs.
STEAMBOAT CHARLES MORGAN. } No. 9664.

Be it remembered that at a general term of this honorable court, and at a session thereof held at New Orleans, Louisiana, on the 19th day of December, A. D. 1881, and in open court, proctor for libellants having offered in evidence the testimony of M. W. Joyce as tending to support the averments set up in the certain amended and supplemental libel filed herein by libellants on the 8th day of November, 1881, to which amended libel claimant had filed an exception on said 19th day of December, 1881, and before the trial of said cause began, which exception forms part of the record in this cause. And said exception having not yet been passed upon, overruled, or maintained by the court, proctor for claimant ob-
97 jected to the introduction of said evidence for the reasons set forth in the said exception, to wit: That said amended libel presents for the first time in this honorable court a new & distinct demand not contained in the original libel, never litigated or passed upon in the district court, from which this cause had come by appeal, and that no question relative to the demand, contained in said amended libel, had been brought up to this court on appeal; that no demand of the sort mentioned in said amended libel can originate in the said circuit court on appeal, which objections having been taken under advisement by the court until it should pass upon the said exception and determine whether said amended and supplemental libel was properly allowed and filed, and whether or not said exception should be maintained or overruled; and proctor for claimant having then and there reserved his exception to the ruling of the court in case said testimony should be finally admitted, if, at any time thereafter, the court should determine that said amended
98 and supplemental libel was properly allowed and filed, and said exception thereto should be overruled and said testimony

admitted; and said court having on the 18th day of March, 1882, found, as a conclusion of law in said cause, that the said amended and supplemental libel was properly allowed and filed, and that said exception thereto should be overruled, and said testimony having been therefore admitted and considered, proctor for claimant now presents his said bill of exceptions so reserved to the admission of said evidence, and prays that the same may be signed.

(Signed) DON A. PARDEE, *Judge.*

Appeal Bond. Filed May 12th, 1882.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, Mary E. Stein, and her husband, Albert Stein; Burris D. Wood, Thomas P. Leathers, Alphonse Martin, and William Fagan, as principals, and Alfred Q.
99 Kennett, as surety, are held and firmly bound unto Martin H. Kouns and William T. Scovell and all other parties, if any in interest, in the sum of four thousand dollars, lawful money of the United States of America, to be paid to the said Martin H. Kouns and William T. Scovell and all other parties, if any in interest, their heirs, executors, administrators, and assigns, for which payment well and truly to be made we bind ourselves and each of us, by himself and each of our heirs, executors, and administrators, firmly by these present.

Sealed with our seals, and dated the twelfth day of May, in the year of our Lord eighteen hundred and eighty-two.

Whereas the said Mary E. Stein, wife of Albert Stein; Burris D. Wood, Thomas P. Leathers, Alphonse Martin, and William Fagan having heretofore, to wit, on the 30th day March, 1882, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the eighteenth day of March, 1882, by the circuit court of the United States for the fifth circuit, holding
100 ses- in and for the eastern district of Louisiana, in the suit of Martin H. Kouns *et al.* [*vs.*] Owners Steamboat Charles Morgan, captain, *et al.*, No. 9664 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden Mary E. Stein, wife of Albert Stein; Burris D. Wood, Thomas P. Leathers, Alphonse Martin, and William Fagan shall prosecute their said appeal to effect, and shall answer all damages and costs if they shall fail to make good said appeal, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) MARY E. STEIN.
ALBERT STEIN. [L. S.]
B. D. WOOD. [L. S.]
T. P. LEATHERS. [L. S.]
A. MARTIN. [L. S.]
WM. FAGAN. [L. S.]
A. Q. KENNETT. [L. S.]

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

Personally appeared Alfred Q. Kennett, who, being duly sworn, deposes and says: That he is the surety on the within bond; that he resides in the city of New Orleans, State of Louisiana,
101 dist. aforesaid, and is worth the full sum of four thousand dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) A. Q. KENNETT.

Subscribed and sworn before me, this 12th day of May, 1882.

(Signed) T. V. COUPLAND,
Commissioner U. S. Circuit Court, Eastern District of Louisiana.

102 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 101 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Martin H. Kouns *et al. versus* Steamboat Charles Morgan, captain, &c., except documents secondly & thirdly described in bill of exceptions No. 1, which are missing, and after diligent search cannot be found, No. 9664 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 23d day of August, A. D. 1882.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Don A. Pardee, United States judge for the eastern district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 23d day of August, A. D. 1882.

DON A. PARDEE, *Judge.*

103 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Martin H. Kouns and William T. Scovell, libellants and appellees, and the Hibernia Insurance Company of New Orleans, subrogee of Martin H. Kouns and William T. Scovell, libellants and appellees, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washton on the second Monday of October next, pursuant to a motion and order for an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Martin H. Kouns and William T. Scovell are libellants and appellees and The Steamboat Charles Morgan, etc., respondent and appellant, to show cause, if any there be, why the decree rendered against the said steamboat Charles Morgan, etc., as in said motion and order for an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 12th day of May, in the year of our Lord one thousand eight hundred and eighty-two.

DON A. PARDEE, *Judge.*

104 *Marshal's Return.*

Received May 18, 1882, by the U. S. marshal, and I served true copies of the within citation of appeal on the appellees herein named on the following date and manner, to wit:

Martin H. Kouns and William T. Scovill, appellees, by handing the same to C. B. Singleton, Esq., a member of the law firm of Singleton & Brown, att'ys of record for said appellees, in person, in the city of New Orleans, May 25th, 1882; the Hibernia Insurance Company of New Orleans, subrogee of Martin H. Kouns and William T. Scovell, libellants and appellees, by handing the same to John Henderson, Esq., the president of said insurance company, in person, in the city of New Orleans, May 23d, 1882.

E. S. CURRY,
D'y U. S. Marshal, Eastern Dist. of La.

Personally appeared before me, E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true copy of the within citation of appeal on the appellees herein named, as set forth in his official return herein.

E. S. CURRY,
D'y U. S. Marshal for Eastern Dist. of La.

Subscribed and sworn before me, June 13, 1882.

T. V. COUPLAND,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

[Endorsed:] United States circuit court. No. 9664. Martin H. Kouns *et al.*, libellant and appellees, *vs.* Steamboat Charles Morgan, etc., respondent and appellant. Citation. Martin H. Kouns, William T. Scovell, Hibernia Ins. Co.

Endorsed on cover: E. Louisiana C. C. U. S. No. 278. The Steamboat "Charles Morgan," her engines, &c.; Mary E. Stein, wife of Albert Stein, sole owner; Albert Stein, master, and Thomas P. Leathers, Burris D. Wood, Alphonse Martin, & William Fagan, sureties, appellants, *vs.* Martin H. Kouns and William T. Scovell, and The Hibernia Insurance Company of New Orleans, subrogee of Martin H. Kouns and William T. Scovell. Filed 26th September, 1882.

115-69

SUPREME COURT

OF THE UNITED STATES.

No. 278.

OCTOBER TERM, 1884.

THE STEAMBOAT "CHARLES MORGAN," HER ENGINES, ETC.; MARY E. STEIN, WIFE OF ALBERT STEIN, SOLE OWNER; ALBERT STEIN, MASTER; AND THOMAS P. LEATHERS, BURRIS D. WOOD, ALPHONSE MARTIN AND WILLIAM FAGAN, SURETIES, APPELLANTS.

vs.

MARTIN H. KOUNS AND WILLIAM T. SCOVELL, AND THE HIBERNIA INSURANCE COMPANY OF NEW ORLEANS, SUBROGEE OF MARTIN H. KOUNS AND WM. T. SCOVELL.

BRIEF FOR APPELLANTS.

R. H. MARR,
Counsel and Proctor for Appellants.

F. F. Hansell, Stationer and Printer, 30 Camp st., N. O.

No. 278.

SUPREME COURT

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OCTOBER TERM, 1884.

THE STEAMBOAT "CHARLES MORGAN," HER ENGINES, ETC.; MARY E. STEIN, WIFE OF ALBERT STEIN, SOLE OWNER; ALBERT STEIN, MASTER; AND THOMAS P. LEATHERS, BURRIS D. WOOD, ALPHONSE MARTIN AND WILLIAM FAGAN, SURETIES, APPELLANTS.

vs.

MARTIN H. KOUNS AND WILLIAM T. SCOVELL, AND THE HIBERNIA INSURANCE COMPANY OF NEW ORLEANS, SUBROGEE OF MARTIN H. KOUNS AND WM. T. SCOVELL.

BRIEF FOR APPELLANTS.

The present suit grew out of a collision, on the morning of December 1st, 1878, shortly before daylight, between the steamboats "Charles Morgan" and "Cotton Valley," whereby the latter named steamboat was sunk.

The scene of the collision was in the Mississippi River, in the vicinity of Bringier's Point, about three miles below the town of Donaldsonville, Louisiana.

In their *original* libel, the owners of the "Cotton Valley" sought to hold the "Charles Morgan" responsible *for the value of their steamboat*, placed at eighteen thousand dollars, and *for certain property stated to belong to Martin H. Kouns*, one of the libellants, personally, *consisting of wearing apparel, furniture, etc.*, placed at fourteen hundred and ninety-four dollars. (Transcript, p. 4.)

Upon decree in the District Court, declaring the "Charles Morgan" to have been in fault and adjudging that the libellants recover from her all damages suffered by them from the collision in question, it was referred to a Commissioner to examine and report the amount of such damage, with power to take any further testimony that might be required. (p. 13.)

The Commissioner reported that the libellants should recover, to wit: The value of the "Cotton Valley" at the time of the collision, $12,603 44; the value of stores and supplies lost by the collision, $1,376 16, and the further sum of $500 cash, in the safe of the boat, belonging to her and lost at the time of the collision; also, that Martin H. Kouns recover the value of a lady's gold watch, $150; of a gentleman's gold watch, $120, and $75 cash, lost in the collision. (p. 16.)

The claimant of the "Charles Morgan" excepted to the Commissioner's report, so far as it recommended the allowance for stores and supplies, and for cash in the boat's safe, as not having been sued for in the libel. (p. 17.)

The final decree amended the report of the Commissioner, *rejecting* the allowance *for stores and supplies*, making some other small amendment, and as thus amended, the report was confirmed. (p. 18.)

After the cause had been taken on appeal to the Circuit Court, the libellants filed an amended libel.

In the second article thereof it was alleged that "*in addition* "to the damages and losses stated and alleged in the original "libel of these libellants, as caused by said collision, * * "are the following, to-wit: For twelve hundred and sixty-four "16-100 dollars, supplies and stores on the Cotton Valley,

"which had been furnished just prior to her leaving New "Orleans on the voyage on which she was sunk, and "which were her equipments for said voyage; and for eight "hundred and ninety-four 90-100 dollars in cash, which were "in the iron safe of said steamboat, and on board of her when "she was sunk; and for fifty-two 50-100 dollars, wages expended "and paid to her pilots and clerks, all of which was totally "lost," etc., etc.

The third article of the amended libel again declared the damages mentioned to be "*in addition to those claimed in the "original libel;*" and, finally, the libellants prayed for the amount of these alleged damages "*in addition to the sum "claimed and demanded in the original libel.*" (pp. 22 and 23.)

The claimant excepted to the amended libel, because presenting for the first time in the Circuit Court a new and distinct demand, never litigated in or passed upon in the District Court; because no question relative to such demand had been brought up on appeal; and because such demand could not *originate* in a Court of Appeals. (p. 24.)

The exception was overruled (p. 26), and the award of the District Court was increased by the sum of $1,376 16 (p. 27), the exact amount of damages for loss of "stores and supplies" found by the Commissioner, upon the reference to him in the District Court. (p. 16.)

His Honor of the Circuit Court found, among other things, that the "Cotton Valley" was the ascending and the "Charles Morgan" the descending boat, and that each boat was properly officered and manned, and had proper watches and proper lights set; also, that the "Cotton Valley" was in her proper position in the river, near the left bank, following up the Bringier point preparatory to rounding the same, while the "Charles Morgan" was above the point, *perhaps* in the middle of the river, but heading across and near the point *to a wood-yard light* in the bend of the river below the point; that at this moment signal was given, answered and understood for passing to the right; that both boats kept their courses, ap-

proaching each other, when the "Charles Morgan" blew three or four short whistles, stopped her engines and commenced backing her wheels, but not enough to stop her headway, and without in anywise changing her course; that meanwhile the "Cotton Valley" rounded the point, and understanding the short whistles *as a hail*, stopped her engines.

That at this time the vessels were within one hundred yards of each other, the "Morgan," with her headway and the current, coming straight on without changing her course, when the pilot of the "Cotton Valley," seeing a collision inevitable if he remained still, started his engines ahead, sheering to starboard, but too late, for immediately the "Morgan," head on, struck her on the port side, about twenty-five feet forward of the stern, and at an angle of about sixty degrees, with such force as to cut through her guards into her hull near the kelson, and cause her to sink in about ten minutes.

That the "Morgan" was in fault, as her proper position was nearer the middle of the river, and her officers disregarded the passing signal given and answered, and made no effort to change the boat's course to the starboard, by which the boats would have been so separated that a collision would have been avoided; and that the "Cotton Valley" was not in fault, as she was in her proper place for an ascending boat, and she gave the proper signal for passing.

That the failure of the "Cotton Valley" to understand the three or four short whistles given by the "Morgan" was not, under the circumstances, a fault, and if the starting of her engines and sheering to the starboard, when the "Morgan" was upon her, was an error, it was an error of judgment *in extremis*, not putting the boat in fault.

That, by the collision, the libellants had suffered damages, as set forth in the original libel, in the sum of $13,698 44, and, as set forth in the supplemental libel, $1376 16.

As conclusions of law, the Court found that the amended libel was properly allowed and filed, and that the exception thereto should be overruled, and that the libellants should

recover the full amount of the damages suffered by them. (pp. 25 to 27.)

The present appeal is from the decree rendered in accordance with these conclusions. (pp. 27, 28.)

So far as the matters complained of by the appellees can be brought up by appeal, the same are presented in three bills of exceptions, found on pages 28 to 35 of the record.

The documents referred to in Bill No. One were offered for the purpose of showing, as a matter of fact, that, under the Statutes of the United States, there had been, immediately after the disaster in question, an investigation of its causes for determining, among other things, who were in fault, and that the result of the investigation was the revocation of the licenses of two of the officers of the "Cotton Valley," including one of the libellants, and the suspension of the license of a third.

It was believed, and it is submitted, that the evidence was admissible, as tending to affect the evidence offered by the libellants tending to show that the "Cotton Valley" was in her proper position in the river, and had proper watches and lights set, at the time of the collision.

Bill No. Two.

On the trial in the Circuit Court, was offered, on behalf of claimant, the testimony of Albert Stein and Henry W. Stein, reduced to writing in New Orleans, and that of Doss, Evelyn and McGeary, *taken at Cincinnati, Ohio, under commission.*

As appears by the bill, the evidence of these witnesses was offered as tending to prove that, at the time of and previous to the collision, the "Cotton Valley" had *not* her proper watches set, and had but one of the lights, to-wit, the light on the outboard side of her starboard smoke-stack, and no light on the outboard side of the port smoke-stack, in violation of the Rules and Regulations for the Government of Pilots navigating the rivers flowing into the Gulf of Mexico and their tributaries, and especially so much of the

16th of said rules as provides that signal lights for steamers navigating said waters to be exhibited from sunset until sunrise, shall be a red light on the outboard side of the port smoke-stack, and a green light on the outboard side of the starboard smoke-stack, to show forward and abeam of their respective sides.

The 16th rule was annexed thereto as part of the bill. (p. 33.)

It further appears, that said evidence was offered as tending to show that, at the time of and prior to the collision, the "Cotton Valley" was not in the proper position in the river for an ascending boat, to-wit., on the left bank, following up Bringier's Point, but was on or near the other or right bank of the river, *in the bend*, and that she ascended along said bank so as to shut out the view of those in the pilot house of the "Charles Morgan," then descending the river and in the middle thereof, and headed towards a certain light, shown by the mark on a certain map introduced in evidence and made part of said bill, [from] said light, as she, the "Cotton Valley," headed out from the shore into and up the river, and gradually changed her direction towards Bringier's Point on the opposite side of the river, and a little higher up than said light, and ran across the bow or course of the "Morgan."

Also, for showing that the "Chas. Morgan," having backed out into the river from Donaldsonville, about four o'clock in the morning, took her position, descending, near the middle of the river, *not* deviating therefrom, but taking for her objective point the said light on shore in the bend, opposite to and a little below Bringier's Point, up to the moment of the collision; that immediately after the exchange of signals for passing to the starboard, the pilot of the "Morgan," apprehensive from the position of the "Cotton Valley," that she would be unable to pass to the right, *stopped and reversed* his engines, backing them strong with all his steam, at the same time giving four short blasts of his whistle as a signal of danger to the "Cotton Valley," and for her to stop and back her engines

until the possibility of a collision was avoided; that the "Cotton Valley" did not stop her engines until almost in front of and across the bow of the "Morgan," and did not reverse them at all; that had she regarded these signals, the collision would have been avoided, the boats being from two to five hundred yards apart when the danger signals were given, a distance sufficient for the "Cotton Valley" to have stopped; that at the moment of the collision, the headway of the "Morgan" was nearly or quite stopped.

That, at the time when the first signals were exchanged, the "Cotton Valley," having changed her course from the right bank in the bend out into and up the river, was bearing, as seen from the pilot house of the "Morgan," between her starboard smoke-pipe and starboard derrick, and a change in the course of the "Morgan," at that time, to the right, would have caused a collision inevitably between the two boats, but lower down the river, and that it was the exercise of prudence and good judgment on the part of the "Morgan" to stop and reverse her engines, and give the short whistles to indicate danger; that *at the exchange of the first signals*, it was the opinion of both the pilots of the "Morgan," then in her pilot house, that the "Cotton Valley" was out of her proper place, but that it was feasible for her to pass to the right, as she had indicated her intention to.

Doubts or fears of misunderstanding signals are expressed by several short sounds of the whistle in quick succession, as shown by the second of the Rules and Regulations already referred to, offered in evidence and made part of the bill. (p. 34.)

The evidence of the witnesses was also offered as tending to prove that, at the time and place of the collision, there was a current in the river of about two miles an hour; that the wind was blowing strongly from the left or east bank, toward the other bank, and quartering down the river; that after remaining near the wreck of the "Cotton Valley" for the purpose of rendering assistance to her passengers and crew, and *withotu*

the use of her steam or wheels, the "Morgan" drifted and was blown against the right or west bank of the river, almost opposite to the point where the collision occurred, and landed *just above* the place where the light on shore had been burning. (pp. 31 to 33.)

As tending to impeach and contradict, and for the purpose of contradicting and impeaching the evidence of the witnesses of claimant, referred to, libellants thereupon offered in evidence the certain depositions purporting to be, and to contain the testimony of Captain Stein, Doss, Evelyn, McGeary and Harry W. Stein, taken in the office of the clerk of the District Court, to be used as evidence in the suits of J. H. Menge et al. vs. Hibernia Ins. Co., and J. H. Menge et al. vs. Teutonia Ins. Co., in said District Court, to which causes, or either of them, the claimant herein was not a party, and *without having first exhibited the said depositions, or either of them, purporting to be the evidence of the said witnesses in said causes, respectively, to the said witnesses, or either of them, and without having in any other manner verified the contents of said purported depositions to be the evidence of said witnesses in said causes.*

On the introduction of these depositions, claimants' proctor interposed the objections that "no basis for offering said pur-" ported depositions had been laid, it not having been shown " or pretended that said purported depositions were ever " submitted to the said witnesses, or otherwise verified as " their evidence in said causes." (p. 33.)

These objections were overruled and the depositions admitted as evidence tending to impeach and contradict, and for the purpose of impeaching and contradicting, the evidence of the witnesses named in the present cause.

Wherefore, the present bill of exceptions.

While signing this bill, his Honor of the Circuit Court adds thereto a note, by which it appears that on their cross-examination the attention of each of the witnesses was called to the evidence given by him in the Insurance Company cases, which were cases growing out of the same collision as the one

now in question, and were specifically examined as to the correctness of said evidence and admitted having testified therein.

It still, however, remains that, beyond admitting that they testified in the causes mentioned, the depositions offered were *never* verified as, or *admitted* by them to be, correct statements of the evidence given by them. These depositions, which were in writing, were neither exhibited nor read to the witnesses, nor otherwise verified as their statements.

The examination of Doss, Evelyn and McGeary in this cause was had in Cincinnati, Ohio (p. 31). It does not appear that their depositions taken in the Insurance Company cases were out of the possession of the District Court till tendered as evidence in the present cause.

Again, the facts that claimant was not a party to the Insurance Company cases; that the depositions were offered *for the purposes stated* without having been first submitted to the respective witnesses, and without having been in any other way identified as their evidence in said causes, as stated in the bill, have the attest of his Honor's signature to the bill.

To interrogate a witness as to whether or not the evidence he gave in a certain other cause was correct is not, it is submitted, on his answer in the affirmative without the submission of the evidence itself to the witness, the sufficient foundation on which the deposition may be admitted to impeach or contradict him.

In Conrad vs. Griffey, 16 Howard, 46, the rule invoked by claimant is distinctly stated. The circumstances were very similar to those in the present case.

"The rule," said the Court, "is well settled in England that "a witness cannot be impeached by showing that he had made "contradictory statements from those sworn to, unless on his "examination he was asked whether he had not made such "statements to the individuals by whom the proof was expected "to be given.

"The rule is founded upon common sense, and is essential "to protect the character of the witness. His memory is

"refreshed by the necessary enquiries, which enable him to "explain the statements referred to, and show they were made "under a mistake, or that there was no discrepancy between "them and his testimony.

"*This rule* is generally established in this country as in "England.

* * * * * * * *

"This rule equally applies whether the declaration of the "witness, supposed to contradict his testimony, be written or "verbal," citing 3 Starkie on Evidence, 1741.

"A written statement or deposition is as susceptible of expla- "nation as verbal statements. * * *

"Independently of the lapse of time, the rule of evidence is "a salutary one, and cannot be dispensed with in the courts of "the United States."

In Carpenter vs. Wall, 11 Adolph. & Ellis, 803, Lord Denman said: "When words are to be proved as having been "uttered by a witness, it is always expected that he shall "have an opportunity for explanation; and that rule applies "here."

Patterson, J., said: "I like the broad rule, that where you "mean to give evidence of a witness' declarations *for any pur- "pose*, you should ask him whether he ever used such expres- "sions."

In Unis vs. Charlton's Administrator, 12 Grattan, 494, 498, the rule contended for was declared to hold "as well to depo- "sitions as to oral examinations of witnesses on the stand."

In Gaffney vs. The People, 50 N. Y. 416 (1872), the Court said: "The reason of the rule applies as strongly to written as "to oral statements made by the witness; and when his evi- "dence is sought to be impeached by written statements, "alleged to have been made by him, *the writing should first be "produced*, so that he may have an opportunity for inspection "and examination. *And as the writing is the best evidence of "the statement made by the witness therein, questions as to the con- "tents are not ordinarily admissible.*"

It is not and will not be pretended, that the depositions of the witnesses in the Insurance Company cases were exhibited to or seen by the witnesses, subsequent to the time when they were taken and prior to the examination in this cause or afterwards.

Reference is also made, upon this question, to the following authorities:

Phillips on Evidence, 5 Am. Ed., vol. 2, pp. 963 to 969.

Greenleaf on Evidence (Redfield's Ed.), Sec. 462 to Sec. 469.

Best's Principles of Evidence (Chamberlaine's Ed.), 463, notes.

State vs. Angele, 32 Louisiana Annual, 407.

McKinney vs. Neil, 1 McLean, 547.

The United States vs. Dickinson, 2 McLean, 329.

Chapin vs. Siger, 4 McLean, 381.

Queen's Case, 6 Eng. Com. Law, 117.

It is respectfully submitted that the bill of exceptions was well founded.

It is evident, from the scope of the testimony of the witnesses for claimants, as shown by the bill of exceptions, that it tended directly to controvert the charges made in the libel.

If it be true that the "Charles Morgan," on rounding out from Donaldson, took a position in the middle of the river, and made as her objective point, the Wood Yard Light, marked in the bend, on the Map "A," it is evident that she never was nearer the left bank or Bringier's Point than the middle of the river; and not she, but the "Cotton Valley," must have been out of her proper place at the moment of the collision.

The witnesses state and the Court finds that the "Morgan" did not change her course, at any time, up to the collision. Their statement is strictly consistent with the evidence that the "Cotton Valley" passed up and near the *right* bank till she shut out the Wood Yard Light from sight of those in the pilot house of the "Morgan," displaying, *if* she had both the lights required by law, only that on her starboard smoke pipe.

If the "Morgan" blew the short whistles, required by the Rules for the Government of Pilots to be given as a signal in time of doubt or danger, and these, though heard by the "Cotton Valley," were interpreted to be a *hail*, in consequence of which, if indeed she stopped her engines at all as these witnesses say she did *not*, she did not *back* them until her headway was stopped, or at all, it was error in the Court to find as a conclusion that such mistake was not a *fault* of the "Cotton Valley," whose bounden duty it was to know and to obey the lawful signals prescribed for such an emergency.

If it be true that the prudent course for the "Morgan" was to stop her engines and to back with all her force, when she found the "Cotton Valley" in front of her, and not to attempt to go to starboard and thus precipitate a collision, it was not fault in her to have stopped her engines and backed them, to avoid and not to run headlong into a collision.

The findings of his Honor were contrary, in every respect, to the tendency of the evidence of claimant's witnesses.

So far as the depositions taken in the Insurance Company cases, offered for the purpose of impeaching and contradicting the evidence of the witness taken in the present cause, had effect in producing this result, by so much, it is conceived, the appellants have suffered wrong, for which they now ask relief.

It is also submitted that there was error in permitting the amended libel to be filed *in the Circuit Court*, for the reasons set forth in the exceptions thereto (p. 24) and in the bill of exceptions No. 3 (p. 34).

The amended libel, presented for the first time, *in the Appellate Court*, a new and distinct demand, not contained in the original libel, never litigated or passed upon in the District Court from which the cause had come to the Circuit Court on appeal, and no question relative to the demand contained in the amended libel had been brought to the Circuit Court on appeal.

As shown by the bill, it was further objected that no demand

of the sort mentioned in the amended bill can originate in the Circuit Court in an appeal.

The amendment sought to be engrafted upon the case is similar to that attempted in Houseman vs. The Schooner North Carolina, 15 Peters, 50:

"We think that this amendment is not justified by admiralty "practice, although it is well known that the most liberal prin- "ciples prevail in admiralty courts in relation to amendments. " * * * *There was no such charge made by the libellant in "the Superior Court, nor any decree made there in relation to "such damages; and no such question could, therefore, be car- "ried up by the appeal of the claimant. It was a new claim, and "originated in the Court of Appeals."*

The John Jay, 3 Blatchford 68. Nelson, J., having declared the probability that, if offered in the District Court, the amendment would have been allowed, said: "But, be that as "it may, it is clear that I have no authority, *in this Court*, to "make the amendment; for, to make it and entertain the suit, "would obviously be, in effect, to assume, not appellate, but "original cognizance of the subject matter of the litigation. * * "In hearing the case, therefore, *this Court* could not be sitting "as an Appellate Court."

Benedict's Admiralty, 2d ed. sec. 483, after showing how freely amendments to admiralty pleadings are permitted, says: "And this may be done after the cause is in the Appellate "Court *if* the new allegation be confined to the original subject "of controversy. *A new subject of controversy* cannot, then, be "inserted in the Appellate Court."

Conkling's United States Admiralty, 2d ed. vol. 2, 263: "But "although the parties are entitled, in the Appellate Court, to "make any amendments which are necessary fully to present "the merits of the case, this right has been held *not to extend* "*to new* or additional subjects of controversy not embraced "within the scope of the original proceeding."

"Where the statute of limitations would run against a "cause of action, *then before the court*, it is held a good reason

" for allowing an amendment as to *such cause* of action, but in " such case, an amendment will not be allowed to introduce a " new substantive cause of action." Dunlap's Adm. Pr. 213, 214; The Harmony, 1 Gallison, 124, 125.

It is not here urged that amendments as to matter of form; to supply omissions and deficiences in pleadings; to correct errors and mistakes in practice in matters of substance; to add new counts or allegations, and for various other objects are not freely allowable; but such amendments in the Appellate Court relate and are confined to matters in, however imperfectly alleged in the original libel, and do not extend to *new* or *additional* subjects of controversy.

The subject of controversy, to wit: the claim for loss of ship stores and of money in the steamboat's safe, are, as the amended libel declares, "in *addition* to the damages and losses " stated and alleged in the original libel. (p. 22.)

For the reasons herein urged specially relative to the second of appellants' bills of exceptions, it is submitted that the decree of the Circuit Court should be reversed in whole.

Should this conclusion be deemed erroneous, it is then urged, that so much of the decree as is founded upon the amended libel, filed in the Circuit Court, should be set aside and the decree to that extent amended.

Respectfully submitted,

R. H. MARR,

Counsel and Proctor for Appellants.

115-69

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM.

No. 278.

THE STEAMBOAT CHARLES MORGAN ET ALS., APPELLANTS,

versus

M. H. KOUNS & W. T. SCOVILL AND THE HIBERNIA INS. CO., SUBROGEE, APPELLEES.

BRIEF FOR APPELLEES.

CHARLES B. SINGLETON,
RICHARD H. BROWNE,
Attorneys for Appellees.

NEW ORLEANS, April 16, 1885.

Thomason, Printer, 36 Natchez Street, N. O.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM.

No. 278.

THE STEAMBOAT CHARLES MORGAN ET ALS., APPELLANTS,

versus

M. H. KOUNS & W. T. SCOVILL AND THE HIBERNIA INS. CO., SUBROGEE, APPELLEES.

BRIEF FOR APPELLEES.

Statement of Pleadings and History.

On the morning of December, 1878, about 4 o'clock, the Steamboats Charles Morgan and Cotton Valley collided in the Mississippi river about 3 miles below Donaldsonville, Louisiana,—the Cotton Valley was sunk, with her cargo, proving a total loss.

The Cotton Valley was ascending, the Charles Morgan descending the river.

The owners of the Cotton Valley sued for the value of the boat and cargo, alleging they were worth $18,000—and M. H. Kouns, her Master, claimed the value of wearing apparel, furniture and other personal effects, amounting to $1494, making a total of $19,494, or thereabouts. See Rec. pp. 4 and 5.

The cause was heard in the District Court, and a decree was rendered condemning the Charles Morgan to pay all damages,

with a reference to a Commissioner to examine and report the amount of such damages, with power to take further testimony. Rec. p, 13.

The respondents moved for a new trial, which, after argument, was denied. Rec. pp. 13 and 14.

On the reference testimony was taken to establish the value of the boat, value of stores and supplies lost, cash in the safe,—with clothing, jewelry, furniture and money, belonging to M. H. Kouns, wife and child,—and the Report fixed the value of the Cotton Valley at $12,603.44, $1376.16 value of stores and supplies, and $500 cash in the safe of the boat, with $270 for watches and $75 in cash belonging to M. H. Kouns and family.

The claim for furniture and clothing was disallowed. Rec. pp. 15 and 16.

Both parties excepted to the Commissioner's report.

The libellants, because the value of the boat was fixed too low, and the claim for furniture and clothing was rejected.

The respondents, on the grounds, that the libellants claimed only as damages the value of the Steamboat Cotton Valley, with certain personal effects, and that the report allowed $1376.16 for stores and supplies, and $500 cash in the boat's safe. Rec. pp. 16 and 17.

The cause was then heard on the Commissioner's report, with the exceptions thereto; and the District Court amended the report by striking out the $1376.16, value of stores and supplies, and allowing $150 for furniture, and $100 for clothing lost.

And being thus amended, all exceptions were overruled, and a final decree was entered against the Charles Morgan for $13,698.44, with 5% interest from 1st December, 1878, until paid, and costs of suit. Rec. p. 18.

Both parties appealed. See Rec. pp. 18, 19, 20 and 21.

When the cause reached the Circuit Court, the libellants filed an amended libel, in which they alleged the loss of stores and

supplies by the sinking of the Cotton Valley to be $1264.16, cash $894 90, wages $52.50, in addition to that stated in the original libel; "that all of the details of said supplies, moneys, stores "and wages, were set forth in Exhibit 1, and the vouchers "therewith offered on behalf of the libellants in the District "Court." Rec. pp. 22, 23.

The defendants excepted to this amended libel, on the ground that it presented a new and distinct demand, never litigated in or passed upon in the District Court; that no such question had been brought up on appeal; and that no such demand could originate in an Appellate Court.

The cause with the exceptions was heard by the Circuit Court, and a decree was entered, overruling the exceptions, and condemning the Charles Morgan and her sureties to pay $13,698.44, as was decreed by the District Court, and the further sum of $1376.16, which was the exact amount of the value of the stores and supplies allowed by the Commissioner in his report (Rec. p. 16) but stricken out by the District Court. Rec. p. 18.

The Circuit Court found as facts:

That a collision occurred between the Charles Morgan and Cotton Valley.

That both were properly officered, manned, equipped, with proper watches and lights.

That the Cotton Valley was in her proper position.

That proper signals were exchanged for each boat to go to the right.

That the Charles Morgan was not in her proper position; that her officers were in fault, disregarding the passing signal given and answered, and made no effort to change the boat's course to starboard.

That the Cotton Valley was in her proper place, as the ascending boat, gave the proper signal for passing, and was not in fault; and

That the failure of the pilot of the Cotton Valley to understand the signal of 3 or 4 whistles, under the circumstances, was not a fault; and if the starting of the Cotton Valley and steering to starboard after her engines had been stopped, was an error, it was *in extremis*, and therefore not a fault. Rec. pp. 25, 26, 27.

There is no bill of exceptions to the findings of fact, and although the appellants discuss the facts stated in their brief on pp. 3, 4, 5, 6, 7, 8, 11 and 12, no heed will be paid by this Court to it. See Bill of Exceptions, No. 2, p. 5.

Three bills of exception were taken by the claimants and appellants:

One to the rejection by the Court as evidence "of the finding of the Board of Local Inspectors." P. 28.

One to the admission of certain depositions as evidence to impeach and contradict certain witnesses; pp. 30–33; and

One to the introduction of any evidence in support of the amended libel.

ARGUMENT.

The appellants do not appear to have made any assignment of errors.

There are only three propositions to be considered in this appeal, which we formulate as questions in the following order:

1st. Did the Circuit Court err in allowing the libellants to file an amended libel after the cause reached that Court? Rec. pp. 22, 24, 26, 34.

2d. Did it err in refusing to admit as evidence the report of the Board of Local Inspectors? Rec. p. 38.

3d. Did it err in overruling the objection of claimants to the admission of the depositions of Albert Stein and 4 others (taken in Menge et al. vs. Hibernia Ins. Co. and Menge et al. vs. The Teutonia Ins. Co.) to impeach and contradict the same witnesses in the instant case? Rec. pp. 31–33.

We answer each and all in the *negative*.

These questions are raised by bills of exceptions.

We discuss them in the order named.

In their libel in the District Court, the libellants claimed $18,000 for the loss of the Cotton Valley and her cargo, and $1494 for jewelry, clothing and furniture lost by the collision.

Testimony was taken and offered in the District Court (and considered by that Court) to show the value of the boat, the value of the stores and supplies on her which were lost, the cash in her iron safe, and of the jewelry, furniture, clothing and cash belonging to the Master, his wife and child. See Commissioner's Report, Rec. pp. 15 and 16. Decree of District Court, Rec. p. 18.

The oppositions to the Commissioner's report also show that fact. Rec. p. 19.

The entire amount of cash lost ($575) was allowed upon the evidence submitted to, and weighed by, the District Court, and that part of the evidence sustaining the claim of $75 (belonging to Mrs. Kouns) and the report thereon, has never been excepted to, or objected to, in any way. See p. 17.

Thus, it will be seen at a glance that all the matters touching the claims for stores and supplies, and money lost, were contested in the District Court, by evidence, in the Commissioner's report, by the opposition of both parties thereto, and in the decree rendered by that Court.

In the Circuit Court the libellants, in their amended libel, declare that the exhibits and vouchers offered on their behalf, (which set forth the details of the supplies, moneys, stores and wages) were offered in the District Court.

And yet the claimants (appellants) say: "it was a new and "distinct demand, never litigated in, or *passed upon* in the Dis-"trict Court, and that no question touching said demand had "been brought up on appeal."

How could they say this, when they were appealing from a

judgment, which allowed a large part of the amount, *included* in the amended libel, and rejected the said value of the "stores and supplies," which were also included in that amendment? When the very sums decreed by the Circuit Court included the cash *allowed* by the District Court, and *added* what the District Court had specifically rejected?

So, then, as to the facts, the appellants have fallen into error.

But if they had not, we submit that, both upon authority and reason, the Circuit Court made no error in permitting the amended libel.

The real matter of controversy was, which of the boats was in fault, and therefore liable for damages. The amount of damages was a mere effect or consequence growing out of that matter or subject of controversy. The claim made in the amended libel (had it been entirely new, as alleged by the claimants) "is embraced within the scope of the original proceeding."

The appellants rely much on the case in 15th Peters; but the Court said in that case that: "There was no such charge made "by libellant in the *Superior Court, nor any decree made there in* "*reference to such damages.*"

In the case now before this Court, the very question was passed upon by the District Court. The amended libel was filed through an abundance of caution. While the words: "in addition to those claimed in the original, etc.," are used, no new claim, no new demand was really presented, for the very claim and demand were matters of evidence and contest and decree in the District Court, as we have just seen.

We think that the case referred to is not against the appellees, because the facts herein place them within the terms of the exception intimated in that decision.

But that decision was prior to the adoption of the 24th rule in Admiralty. We think that rule settles the point in question in appellees' favor at once.

Mr. Conkling, in his Treatise on Admiralty, (2d Vol. p. 775) says: "The principle established appears to be this; that not only "is the party entitled to amend a defective statement of his "cause of action or defence, but if, in the progress of a suit *in rem*, "he discovers or first becomes aware of, even a new cause of "action, or ground of defence, *which the evidence* adduced, or "which *he has it in his* power to give, (italics ours) is adapted to "support, he may, in the discretion of the Court, original or ap "pellate, be permitted, by an amended or supplemental libel or "answer, to avail himself of such new cause of action or defence. "Such, indeed, is the clear import of the 24th of the new rules of "Admiralty Practice."

In Udall vs. Steamship Ohio, 17 Howard, 18, this Court used these words: "it has not been the practice of this Court to allow "amendments, except by the consent of parties; though in the "case of Kennedy et al. vs. Georgia State Bank, 8 Howard, 610' "this Court say, there is nothing in the nature of an appellate "jurisdiction, proceeding according to the Common Law, which "forbids the granting of amendments, etc., but the practice has "been to remand the cause to the lower court for amendment."

This Court declared, in the case of the Sapphire, (18 Wallace, 56) that "it was not competent for them (defendants) to make such a claim *first* in this Court;" but it intimates, in unmistakable terms, that had they (the defendants) asked to amend their pleadings, claiming damages, or offered further proofs of them, it would have been the duty of the Circuit Court to have allowed them to do so.

It was exactly what Judge Woodruff did in the case of The Pennsylvania, 12 Blatch. 67, in which case this Court had held, on appeal, that the damages ought to be divided. Judge Woodruff, after argument, allowed the defendants to amend their answer, *claiming damages.* See case of Weaver vs. Thomson, 1 Wallace C. C. 343; Lamb vs. Puckman, 21 Law Rep. 589.

We submit, therefore, that there was no error in the ruling of the Circuit Judge.

As to the 2d question. (Bill of Exceptions, p. 20).

It seems to us that the affirmative of such a question cannot be seriously argued. It bears upon its face its own refutation.

The report of the Board of Local Inspectors was not offered to prove *rem ipsam*. If it had been, no objection would have been raised; but it was offered to fix the cause of the collision upon the Cotton Valley, and to establish the fact of negligence and mismanagement of its officers.

We observe that the Bill is not complete, for the documents referred to as 2d and 3d, said to be annexed to it and made part of it, are not to be found in the Record.

The testimony taken by the Board was *ex parte*, and without the opportunity of cross-examination.

The effort was here made to direct, or influence, or control the action of the Circuit Judge by the conclusion of men who were clothed with no judicial authority or capacity, so far as an Admiralty Court is concerned, and whose finding or conclusion was not even supported or accompanied by the testimony upon which, it is to be supposed, the report was made.

This mode of trying an admiralty cause, we submit, would be both new and novel.

It was the duty of the Court to find who was in fault—to find that fact from the testimony of witnesses submitted to it, who had been sifted and tested by a cross-examination.

The appellants do not pretend to support such a proposition, as their Bill suggests, by any authority.

It would seem, we respectfully suggest, that the "Horn-book of Evidence" would answer the question propounded in the negative.

It was not the best evidence—simple hearsay, and not admissible.

As to the 3d proposition. (Bill of Exceptions, No. 2, pp. 30-34).

We are utterly at a loss to understand why so much testimony of the claimants, touching the collision, the position of the two boats, their lights, the rules, map, etc., were copied into the Record, and made a part of it, (see Record, pp. 31–34 and map) or why so much of the appellants' brief is devoted to the discussion of these matters (see brief, pp. 3, 4, 5, 6, 7, 11 and 12) for there is no Bill taken to the *finding of the facts* by the Court, or any one of its findings of facts. See Bill, pp. 30–34.

If, by any possible stretch of imagination, it could be supposed to be a Bill going to the whole of the findings, without specifying any particular one, it would be inadmissible. See The Benefactor, 102 U. S. 218; The Abbotsford, 98 U. S. 440.

If it could be possibly tortured into a Bill referring to any particular finding, then it cannot be heeded, for the same rule applies.

The findings of fact by the Circuit being conclusive on this Court, (The Adriatic, 107 U. S. 512; The New Orleans, 107 U. S. 16; The Annie Lindsley, 104 U. S. 191), no question can arise concerning them, which is presented in this Record.

But the Bill has only one object. It was taken to the admission (and to naught else) by the Court of certain depositions purporting to be, and containing the testimony of Albert Stein, Sylvester Doss, John B. Evelyn, Livingston McGeary and Harry W. Stein, taken in the Clerk's Office of the United States District Court, in the suits of Menge et al. vs. The Hibernia Ins. Co. and Menge et al. vs. The Teutonia Ins. Co., which were offered by the libellants as tending to impeach and contradict, and for the purpose of impeaching and contradicting the evidence of the same witnesses in the case now pending. See Rec. p. 33.

After the declaration by the Circuit Judge, at the foot of the Bill (p. 33), and knowing the facts, by being connected with all the cases from their inception to this day, we find it no easy matter to discuss the only issue raised by this Bill, to-wit: whether the Court made an error in admitting the depositions offered by libellants.

The Court says:

1st. Each witness had his attention called to the evidence given by him in the Insurance cases.

2d. That the cases grew out of the same collision.

3d. That these witnesses were specifically examined as to the correctness of said evidence.

4th. And each admitted testifying therein.

5th. That at the offering, the claimants did not deny or object that it was not the evidence of said witnesses, respectively.

6th. Nor claimed that the evidence was improperly taken and reported.

In the face of this statement by the Court, that these witnesses were specifically examined as to the correctness of said evidence, and admitted having testified therein, the claimants declare, that "the depositions offered were never verified as, or admitted "by them to be correct statements of the evidence given by "them." Brief, p. 9.

As a matter of fact, the rule in Conrad vs. Griffey was strictly followed; and the witnesses examined in Cincinnati were asked specifically if they had not, on their examination in New Orleans in the Insurance cases, testified so and so, quoting the answers made in those cases, and the witness in each case was given the opportunity to say, that he did or did not, or to explain or modify, or to say that he did not remember, as he felt inclined. The other two witnesses were examined in New Orleans, and if this Court could look into the method of examination followed with each and all of the witnesses, the statement of the Circuit Court,

that "each witness had his attention called to the evidence given "by him in the Insurance cases, and were specifically examined "as to the correctness of said evidence," would be found to be abundantly sustained.

We submit that the declaration of the Court is a finding of fact which this Court will not disregard; and the numerous authorities cited and quoted by the appellants, will only serve to show their industry and zeal, but, as they do not apply to the facts in this case, their labor will be in vain.

We respectfully submit that the decree of the Circuit Court be affirmed.

CHARLES B. SINGLETON,
RICHARD H. BROWNE,
Attorneys for Appellees.

NEW ORLEANS, April 16, 1885.